(10)

No. 99-936

Supreme Court, U.S.
FILED
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IN THE

# Supreme Court of the United States

OCTOBER TERM, 2000

CRYSTAL M. FERGUSON, *et al.*,

*Petitioners*,

—v.—

THE CITY OF CHARLESTON, SOUTH CAROLINA, *et al.*,

*Respondents*.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT

## JOINT APPENDIX
## VOLUME I OF III, (Pages 1 to 623)

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Crystal M. Ferguson, Theresa Joseph Darlene M. Nicholson, Paul S. Hale, Ellen L. Knight, Patricia R. Williams, Lori Griffin, Pamela Pear, Sandra Powell, and LaVerne Singleton, on behalf of themselves and a class of women similarly situated

Plaintiffs,

v.

The City of Charleston, South Carolina, Dr. Harrison L. Peoples, Dr. Thomas C. Rowland, Jr., Dr. Stanley C. Baker, Jr., Dr. Charles B. Hanna, Dr. Cotesworth P. Fishburne, Dr. E. Conyers O'Bryan, Melvyn Berlinsky, Patricia T. Smith, M.J. Cooper, Herbert C. Granger, Robert C. Lake, Jr., Phillip D. Sasser, Claudia W. Peoples, Dr. Carroll V. Bing, Jr., Reuben Greenberg, Charles Molony Condon, David Schwacke, Shirley Brown, R.N., Edgar O. Horger, III, M.D., Victor Del Bene, John Sanders, William B. Pittard, M.D., Roger Newman, M.D., Harold Bivins, M.D., Melesia Henry, R.N.,

Defendants.

**DEFENDANT'S ANSWER TO PLAINTIFFS' SECOND AMENDED COMPLAINT**
**(Jury Trial Demanded)**

The Defendants, The City of Charleston, South Carolina, Dr. Harrison L. Peoples, Dr. Thomas C. Rowland, Jr., Dr. Stanley C. Baker Jr., Dr. Charles B. Hanna, Dr. Cotesworth P. Fishburne, Dr. E. Conyers O'Bryan, Melvyn Berlinsky, Patricia T. Smith, M.J. Cooper, Herbert C. Granger, Robert C. Lake, Jr., Phillip D. Sasser, Claudia W.

Peoples, Dr. Carroll V. Bing, Jr., Reuben Greenberg, Charles Molony Condon, David Schwacke, Shirley Brown, R.N., Edgar O. Horger, III, M.D., Victor Del Bene, John Sanders, William B. Pittard, M.D., Roger Newman, M.D., Harold Bivins, M.D., Melesia Henry, R .N., (hereafter Defendants) answer the Second Amended Complaint of the Plaintiffs and reserving all their rights under their motions filed herewith, allege as follows:

1. The Defendants deny each and every allegation of the Plaintiffs' Second Amended Complaint which is not hereinafter specifically admitted.

2. The allegations of Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 are denied.

3. The allegations of Paragraphs 12 and 13 state conclusions of law which the Defendants are required neither to admit nor deny.

4. The allegations of Paragraph 14 are denied.

5. The allegations of Paragraph 15 state a conclusion of law which the Defendants are required neither to admit nor deny.

6. The Defendants, upon information and belief, admit the allegations contained in Paragraph 16.

7. Upon information and belief, the allegation that Plaintiff Joseph is an African-American woman is denied. The Defendants, upon information and belief, admit remaining the allegations contained in Paragraph 17.

8. The Defendants, upon information and belief, admit the allegations contained in Paragraphs 18, 19, 20, 21, 22, 23, 24 and 25.

9. In response to the allegations of Paragraph 26, the Defendants admit only that the City of Charleston is a domestic municipal corporation. The remaining allegations are denied as stated.

10. In response to Paragraphs 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, and 40, the Defendants admit that the individuals named are members of the Board of Trustees of the Medical University of South Carolina and that MUSC is a state-administered institution receiving both state and federal funding. All other allegations are denied.

11. The Defendants admit only the allegations of Paragraphs 41, 42, 43, and 44 regarding the individual Defendants' positions. The remaining allegations regarding the capacity in which they are sued are specifically denied.

12. In response to the allegations of Paragraph 45, the Defendants admit only that Edgar O. Horger, III, M.D. was a physician in the Department of Obstetrics and Gynecology at MUSC prior to June 1990. The remaining allegations are specifically denied.

13. In response to the allegations of Paragraph 46, the Defendants admit only that Victor Del Bene was a Medical Director at MUSC prior to November of 1990. The remaining allegations of said Paragraph are denied.

14. The Defendants admit only the allegations regarding the individual Defendant's positions at MUSC contained in Paragraphs 47, 48, and 49. The remaining allegations of said Paragraphs are denied.

15. In response to the allegations of Paragraph 50, the Defendants admit only that Harold Bivins was a physician in Obstetrics and Gynecology at MUSC after July

1, 1991. The remaining allegations of said Paragraph are specifically denied.

16. In response to the allegations of Paragraph 51., the Defendants admit only that Melesia Henry, R.N. was an MUSC Obstetrics Case Manager prior to July 15, 1994. The remaining allegations of said Paragraph are specifically denied.

17. The Defendants, upon information and belief, deny the allegations as stated in Paragraphs 52 through 279, including subparts. In denying these paragraphs, the Defendants make reference to the Interagency Policy, the medical records, the hospital records, and all documents dealing with the care of the Plaintiffs which fully and more completely set forth the care and treatment of the Plaintiffs. The allegations as set forth in these Paragraphs are specifically denied as the records are more accurate and correct.

18. The Defendants deny the allegations contained in Paragraphs 280 through 316, being all the remaining allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth Causes of Action.

FOR A SECOND DEFENSE
(§ 1983)

19. That any alleged violations committed by the Defendants, which are specifically denied, are violations of state law and do not rise to the level of a Constitutional right or interest and thus, the Plaintiffs have no basis for recovery under 42 U.S.C. § 1983.

20. The action taken by the Defendants in formulating, adopting, implementing, and enforcing the MUSC Interagency Policy and the Laws of the State of

South Carolina resulted in no deprivation of the Constitutional rights, privileges, or immunities of the Plaintiffs or any injury whatsoever to the Plaintiffs. Thus, the Plaintiffs have no legal basis for recovery.

FOR A THIRD DEFENSE
(No Policy or Custom)

21. The Defendants are immune from this suit under 42 U.S.C. § 1983, in that the Defendants adopted no policy or custom in violation of the Plaintiffs' Constitutional rights.

FOR A FOURTH DEFENSE
(Officials)

22. The Defendants sued in their official capacities as state actors are immune from this suit based on the Eleventh Amendment of the United States Constitution and the Supreme Court's holding in Will v. Michigan Dep't of State Police, 491 U.S. 58 (1989). Further, the Plaintiffs are barred from the recovery of money damages from these Defendants as a matter of law.

FOR A FIFTH DEFENSE
(Immunity)

23. Those Defendants sued in their individual capacities have both absolute and qualified immunity from suit and therefore, the Plaintiffs are barred from recovery.

FOR A SIXTH DEFENSE
(Statutory Immunity)

24. The Defendants are immune from this suit under South Carolina Code § 20-7-540, and therefore the Plaintiffs are barred from recovery.

FOR A SEVENTH DEFENSE
(Consent)

25. The Plaintiffs consented to treatment at MUSC which included testing and subsequent disclosure of their drug use as evidenced by their consent form(s) attached hereto as Exhibit "A" and therefore are barred from recovery.

FOR AN EIGHTH DEFENSE
(Justification)

26. The Defendants had probable cause to arrest the Plaintiffs and therefore the arrests of the Plaintiffs were justified and the Plaintiffs are barred from recovery.

FOR A NINTH DEFENSE
(Justiciable Controversy: Mootness)

27. The issues presented in the Plaintiffs' Second Amended Complaint are no longer live, nor do the Plaintiffs have a legally cognizable interest in the outcome nor does there exist a reasonable expectation that the Plaintiffs will again be subjected to the actions alleged in the Second Amended Complaint. The Plaintiffs' Second Amended Complaint presents no case or controversy susceptible of adjudication sufficient to warrant invocation of federal court jurisdiction on their behalf and therefore Plaintiffs' Second Amended Complaint should be dismissed.

FOR A TENTH DEFENSE
(Malicious Prosecution)

28. The Law Enforcement Defendants had probable cause to institute any and all proceedings; the Defendants had no malice in instituting the proceedings; the Defendants have continued no proceedings against the Plaintiffs; and the Plaintiffs suffered no injury or damages as a result of any proceedings and thus the Plaintiffs are barred from recovery.

Further, any deprivation of the Plaintiffs' rights, which is specifically denied, are violations of state law only and do not rise to the level of a Constitutional deprivation so as to bar Plaintiffs from bringing this action pursuant to 42 U.S.C. § 1983.

FOR AN ELEVENTH DEFENSE
(Election of Remedies)

29. The Plaintiffs allege that they are entitled to remedies allowed by law (which is specifically denied) that are different and inconsistent and would allow double recovery should the requested relief be granted. In order to meet the demands of fairness and orderly adjudication, the Plaintiffs should be required, to elect among their inconsistent remedies.

FOR A TWELFTH DEFENSE
(Standing)

30. The Plaintiffs have sustained no direct injury nor are they in immediate danger of sustaining some direct injury as a result of some alleged official conduct on behalf of the Defendants. Any alleged harm or threat to the Plaintiffs by the Defendants is not real or immediate. There exists no likelihood that these particular Plaintiffs will be subject to any illegal conduct and thus have no standing to sue for prospective injunctive relief. The Plaintiffs have suffered no injury traceable to the Defendants' acts or omissions and have no personal stake in the outcome of any decision forthcoming from this case sufficient to warrant invocation of Federal Court jurisdiction on their behalf and therefore Plaintiffs' Second Amended Complaint should be dismissed.

FOR A THIRTEENTH DEFENSE
(Ripeness)

31. The Plaintiffs have suffered no specific present, objective harm, nor are they suffering any objective threat of specific future harm, nor does there exist a reasonable certainty that the Plaintiffs themselves will be subjected to any specific unconstitutional harm or threat of injury in the future. Thus, the matters alleged in the Plaintiffs' Second Amended Complaint are not ripe, nor are they sufficient to warrant invocation of Federal Court jurisdiction on their behalf and therefore Plaintiffs' Second Amended Complaint should be dismissed.

FOR A FOURTEENTH DEFENSE
(Assumption of the Risk)

32. That, upon information and belief, the Plaintiffs had knowledge of and assumed the risks incident to their drug use. The injuries alleged by the Plaintiffs were caused by and arose out of such risks so as to bar the Plaintiffs from recovery.

FOR A FIFTEENTH DEFENSE
(Authority of Statute or Ordinance)

33. That, upon information and belief, in allegedly committing the act alleged in the Second Amended Complaint, the Defendants were duly authorized by, and acted under authority of the provisions of Section 20-7-540 of the Laws of the State of South Carolina so as to bar the Plaintiffs from recovery.

FOR A SIXTEENTH DEFENSE AND MOTION TO DISMISS
(Failure to State a Claim)

34. That, upon information and belief, the allegations in the Second Amended Complaint fail to state a claim upon which relief can be granted and should therefore be

dismissed under Rule 12 (b) of the Federal Rules of Civil Procedure.

FOR A SEVENTEENTH DEFENSE AND MOTION TO DISMISS
(Action Under and Within Proper Color of State Law)

35. The Defendants at all times acted in good faith and according to the law, and under and within proper color of State Law, in connection with the alleged incidents. All acts of the Defendants were done in good faith and without malice so as to bar the Plaintiffs from recovery.

FOR AN EIGHTEENTH DEFENSE AND MOTION TO DISMISS
(Probable Cause)

36. The Law Enforcement Defendants had probable cause to arrest the Plaintiffs and the arrests were done in good faith and with sufficient probable cause so as to bar the Plaintiffs from recovery.

FOR A NINETEENTH DEFENSE AND MOTION TO DISMISS
(Proper Enforcement of the Law)

37. That, upon information and belief, the Plaintiffs were arrested for Possession of Crack and/or Cocaine and/or Heroin pursuant to S.C. Code § 44-53-370, Distribution to Persons Under Eighteen pursuant to S.C. Code § 44-53-440, and Unlawful Neglect of a Child pursuant to S.C. Code § 20-7-50. The Defendants involved acted appropriately and sought to enforce the law in a proper and correct manner. The acts of the Defendants involved were done solely to uphold the law and therefore the claims of the Plaintiffs should be dismissed.

FOR A TWENTIETH DEFENSE
(Equal Protection)

38. The Interagency Policy at issue in this case was not enacted for the purpose of discriminating against pregnant patients on the basis of race. The enactment of the Interagency Policy, therefore, does not violate the Equal Protection Clause of the 14th Amendment to the U.S. Constitution under the holding in Washington v. Davis, 426 U.S. 229 (1976).

39. The Medical University of South Carolina has a compelling interest to prevent unborn children from suffering from temporary and permanent birth defects that are associated with the use of illegal drugs during pregnancy. The Interagency Policy is necessary to enforce this compelling interest.

40. The Interagency Policy is a well-reasoned and an appropriate reaction to the increasing number of drug-affected children that have been born at the MUSC Hospital.

41. The Interagency Policy, by its explicit terms, does not discriminate against African-Americans or any other racial classification of pregnant patients. The Interagency Policy, therefore, does not violate the Equal Protection Clause of the 14th Amendment to the Constitution under the holding in Personnel Administrator of Massachusetts v. Feeney, 442 U.S. 254 (1979).

42. The Interagency Policy is not administered in a racially discriminatory manner. All pregnant patients who meet the criteria of the policy are treated similarly under the guidelines of the policy. The administration of the Interagency Policy, therefore, does not violate the Equal

Protection Clause of the 14th Amendment under the holding in Alexander v. Louisiana, 405 U.S. 625 (1972).

FOR A TWENTY-FIRST DEFENSE
(Legal Search)

43. That, upon information and belief, any alleged search conducted by the Law Enforcement Defendants was conducted with the consent of the Plaintiffs and in a legal manner, supported by probable cause and thus, bars the Plaintiffs from recovery.

FOR A TWENTY-SECOND DEFENSE
(Punitive Damages)

44. That, upon information and belief, any award or assessment of punitive damages as prayed for by the Plaintiffs against the Defendants would violate their Constitutional rights under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution and comparable provisions of the South Carolina Constitution.

FOR A TWENTY-THIRD DEFENSE
(Class Action Certification)

45. That, upon information and belief, in a case such as this, where a decision on the merits in favor of the plaintiff would inure to the benefit of any putative class, class certification is unnecessary and should be denied.

FOR A TWENTY-FOURTH DEFENSE
(42 U.S.C. § 290dd-2)

46. The Medical University of South Carolina including their OB/GYN Clinics, qualify as a general care facility that does not have an identified unit or medical personnel whose primary function is to provide alcohol or drug diagnosis, treatment or referral for treatment.

Additionally, the Center does not qualify as a federally assisted drug abuse program. Thus, the Defendants are not required to maintain confidential records for the Plaintiffs pursuant to 42 U.S.C. § 290dd-2.

47. If it is determined that the Medical University of South Carolina does fall within 42 U.S.C. § 290dd-2, which is specifically denied, the Defendants involved are and have been in compliance with all of the mandates of the statute and accompanying regulations in that the Plaintiffs consented to the drug testing and disclosure.

FOR A TWENTY-FIFTH DEFENSE
(Pullman Abstention)

48. The Plaintiffs' Second Amended Complaint tenders substantial Constitutional issues touching upon sensitive issues of social policy. However, a definite ruling on a state issue could terminate the controversy. The State courts have not yet ruled on whether a fetus is included within the definition of a "person" or "child" under S.C. Code § 44-53-440 and S.C. Code § 20-7-50. Thus, this federal court must abstain from deciding this case.

FOR A TWENTY-SIXTH DEFENSE
(Younger Abstention)

49. State criminal prosecutions against the Plaintiffs were pending prior to the filing of this suit in federal court, thus the court must not stay or enjoin these prior pending state court criminal proceedings as determined by the Supreme Court's holding in Younger v. Harris, 401 U.S. 36 (1971).

FOR A TWENTY-SEVENTH DEFENSE
(Prosecutorial Immunity)

50. The Defendants as Prosecutors have absolute immunity from suit and therefore, the Plaintiffs are barred from recovery.

FOR A TWENTY-EIGHTH DEFENSE
(Good Faith)

51. The Defendants at all times acted in good faith and according to the laws of South Carolina and the United States and with the reasonable belief that their actions did not violate the clearly established statutory or Constitutional rights of the Plaintiffs.

FOR A TWENTY-NINTH DEFENSE
(Personal Involvement)

52. The Defendants had no personal involvement in any of the alleged actions and are thus not subject to suit for these actions and therefore, the Plaintiffs are barred from recovery.

FOR A THIRTIETH DEFENSE
(Not "Persons" under § 1983)

53. The Defendants are not "persons" as contemplated by 42 U.S.C. § 1983 and therefore are not subject to suit under that section and therefore, the Plaintiffs are barred from recovery.

FOR A THIRTY-FIRST DEFENSE
(Not Under Color of State Law)

54. The actions of the Defendants were not taken under color of state law and thus any deprivation of any constitutional or federal statutory right of the Plaintiffs, which is specifically denied, is not actionable under 42 U.S.C. § 1983 and therefore, the Plaintiffs are barred from recovery.

FOR A THIRTY-SECOND DEFENSE
(Lack of Jurisdiction over State Law Claim)

55. This Court lacks jurisdiction over the pendant or supplemental state law claim of abuse of process pursuant to 28 U.S.C. § 1367(c), and therefore, this claim should be dismissed.

FOR A THIRTY-THIRD DEFENSE
(Mootness)

56. The Plaintiffs are not facing any further risk of injury, damages, or harm resulting from the actions alleged, and therefore their claims are moot and should be dismissed.

FOR A THIRTY-FOURTH DEFENSE
(Tort Claims Act)

57. The Plaintiffs' abuse of process claim against these Defendants are exclusively controlled by the South Carolina Tort Claims Act, South Carolina Code § 15-78-10, et seq. (Law. Co-op. Supp. 1993).

58. The abuse of process claim for which the Plaintiff seeks recovery are barred by South Carolina Code § 15-78-60 in that the alleged loss resulted from:

a) legislative, judicial, or quasi-judicial action or inaction (subsection 1);

b) administrative action of a legislative, judicial, or quasi-judicial nature (subsection 2);

c) execution, enforcement, and lawful implementation of process (subsection 3);

d) adoption, enforcement and compliance with the law (subsection 4);

e) the exercise of a discretionary act (subsection 5);

f) an act or omission of a person other than an employee (subsection 20); and

g) institution or prosecution of any judicial or administrative proceeding.

59. Any award or assessment of actual damages from the abuse of process claim against these Defendants in this case or the other cases pending which arose from the same occurrence described in Plaintiffs' Second Amended Complaint are limited to $500,000.00 in the aggregate, and no one Plaintiff is entitled to more than $250,000.00 pursuant to South Carolina Code § 15-78-120(2).

BY WAY OF COUNTERCLAIM
(Attorneys Fees)

60. The Defendants repeat and reallege each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

61. That, upon information and belief, the Plaintiffs' action in bringing this suit is frivolous, unreasonable and without foundation and thus the Defendants are entitled to recover from them their reasonable attorney's fees and costs pursuant to 42 U.S.C. § 1988.

WHEREFORE, the Defendants, answering the Second Amended Complaint of the Plaintiffs herein and specifically reserving their rights under their motions filed herewith, pray that the Plaintiffs' Second Amended Complaint be dismissed with costs; together with such other and further relief as the Court deems appropriate.

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July 10, 1995
Charleston, South Carolina
RHH\CHAS-MU.280\2-AMEANS.WER

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by mailing or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 10th day of July, 1995

/s/

* * *

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

**EXCERPTS FROM TESTIMONY OF DAVID ANNIBALE**

**[ANNIBALE 175]**

(JURY ENTERS AT 10:07 A.M.)
THE COURT: GOOD MORNING, LADIES AND GENTLEMEN.
JURY PANEL: GOOD MORNING.
THE COURT: OKAY. YOU MAY PROCEED.
MR. WHERRY: CALL DR. DAVID ANNIBALE TO THE STAND,
PLEASE.

- - -

DAVID ANNIBALE, PLF. WITNESS, SWORN.

DIRECT EXAMINATION

BY MR. WHERRY:
Q. DR. ANNIBALE, YOU'RE AN EMPLOYEE OF THE MEDICAL UNIVERSITY OF SOUTH CAROLINA?
A. YES, THAT'S CORRECT.
Q. YOU HAVE BEEN FOR HOW LONG, DOCTOR?
A. SINCE 199.
Q. DOCTOR, YOUR POSITION AT THE MEDICAL UNIVERSITY IS THAT YOU ARE THE MEDICAL DIRECTOR OF LEVEL ONE AND LEVEL TWO NURSERY FOR NEWBORN AND INTERMEDIATE CARE AT THE MEDICAL UNIVERSITY; IS THAT RIGHT?

A. THAT'S ONE OF MY RESPONSIBILITIES, THAT'S CORRECT.
Q. AND YOU PREVIOUSLY HELD THAT POSITION WITH CHARLESTON MEMORIAL HOSPITAL; IS THAT CORRECT?
A. THAT'S CORRECT.
Q. THE NURSERY THERE CLOSED AND YOU CAME TO MUSC?

**[ANNIBALE 176]**

A. BOTH NURSERIES WERE OPEN AT THE SAME TIME, BUT THE CHARLESTON MEMORIAL NURSERY DID CLOSE.
Q. YOU WERE ALSO THE DIRECTOR OF THE NEONATOLOGY FELLOWSHIP TRAINING PROGRAM AND THE CLINICAL DIRECTOR OF THE NEONATOLOGY NURSE PRACTITIONER PROGRAM; IS THAT RIGHT?
A. THAT'S CORRECT. I'M NO LONGER THE CLINICAL DIRECTOR OF THE NURSE PRACTITIONER PROGRAM HOWEVER.
Q. WHEN DID THAT END?
A. THAT ENDED, I DON'T RECALL THE EXACT DATE, BUT IT WAS ON THE ORDER OF SIX MONTHS AGO, AT MY REQUEST.
Q. WHEN DID YOU BEGIN YOUR TENURE AT MUSC?
A. IN AUGUST OF 1989. I'M SORRY. JULY OF 1989.
Q. DOCTOR, I TAKE IT THAT YOU ARE FAMILIAR THEN WITH THE CONCEPT KNOWN AS THE INTERAGENCY POLICY?
A. YES, SIR.

Q. AND YOU WERE AT MUSC AT THE INCEPTION OF THAT POLICY?
A. YES.
Q. DOCTOR, IN ADDITION TO YOUR DUTIES AT MUSC, YOU ALSO HOLD A CONSULTING STAFF POSITION AT ROPER, TRIDENT AND SAINT FRANCIS HOSPITALS; IS THAT CORRECT?
A. THAT WAS CORRECT IN 1989, THE STAFF PRIVILEGES AT TRIDENT. SUMMERVILLE MEDICAL CENTER IS NOW FULLY STAFFED.
Q. WHEN DID THAT CHANGE, DOCTOR?
A. I DON'T RECALL THE DATE EXACTLY. IT WAS SEVERAL YEARS AGO. AND ACTUALLY, I'M SORRY. WITHIN APPROXIMATELY A YEAR

**[ANNIBALE 177]**

AGO, FULL ACTIVE STAFF AT SAINT FRANCIS AS WELL.
THE COURT: I DIDN'T UNDERSTAND WHAT YOUR ANSWER WAS.
THE WITNESS: MY ORIGINAL STAFF PRIVILEGES AT ALL FOUR HOSPITALS WERE CONSULTING STAFF. BUT OVER THE LAST SEVEN YEARS AT TRIDENT AND SAINT FRANCIS THEY WERE CHANGED TO ACTIVE STAFF.
THE COURT: OKAY.
Q. (BY MR. WHERRY, CONTINUING) DID YOU CHANGE TO ACTIVE STAFF?
A. I'M NOT QUITE SURE HOW TO ANSWER THAT.

Q. WELL, WHAT I'M TRYING TO UNDERSTAND IS WHETHER YOUR ASSOCIATION WITH ROPER, TRIDENT AND SAINT FRANCIS CONTINUES TODAY?
A. YES, IT DOES.
Q. AND THAT ASSOCIATION WITH THOSE HOSPITALS BEGAN APPROXIMATELY WHEN?
A. WITH ROPER AND SAINT FRANCIS, IT WAS APPROXIMATELY 1989. WITH TRIDENT, APPROXIMATELY ONE TO TWO YEARS SUBSEQUENT TO THAT. AND SUMMERVILLE MEDICAL CENTER BEGAN WHEN SUMMERVILLE OPENED ITS LABOR AND DELIVERY SERVICES, WHICH I BELIEVE WAS ABOUT THREE YEARS AGO.
Q. LEAVING OUT SUMMERVILLE - SAINT FRANCIS, TRIDENT AND ROPER, THE INTERAGENCY POLICY, DOCTOR, TO YOUR KNOWLEDGE, WAS IT EVER APPLIED AT ANY OF THOSE THREE HOSPITALS, SAINT

**[ANNIBALE 178]**

FRANCIS, TRIDENT OR ROPER?
A. I DON'T RECALL SEEING A VERSION OF THE INTERAGENCY POLICY POLICY AT ANY OF THOSE HOSPITALS.
Q. AND DID YOU EVER SEE SOMETHING THAT APPEARED TO BE THE SAME BEING APPLIED AT THOSE HOSPITALS?
A. AS A POLICY?
Q. DID YOU EVER SEE ANY WOMEN AT THOSE HOSPITALS BEING ARRESTED FOR DISTRIBUTION OF COCAINE TO A MINOR OR ENDANGERING

THE WELFARE OF A MINOR, THE MINOR BEING THEIR FETUS, FOR TESTING POSITIVE FOR URINE DRUG SCREEN FOR COCAINE WHILE IN THE HOSPITAL?

MS. SHOWERS: I OBJECT TO RELEVANCE, YOUR HONOR.

MR. WHERRY: MAY I RESPOND?

THE COURT: CERTAINLY. GO AHEAD. I OVERRULE THE OBJECTION. THANK YOU.

THE WITNESS: RESPOND?

THE COURT: YES.

A. I NEVER PERSONALLY SAW THAT OCCUR.

Q. DOCTOR, YOU ARE AWARE, ARE YOU NOT, OF THE TERM CHAIN OF CUSTODY?

MS. SHOWERS: OBJECTION, RELEVANCE. THIS WITNESS IS A DOCTOR.

THE COURT: WELL I DON'T KNOW HOW THE TERM IS GOING TO BE USED. EVERYONE KNOWS A LITTLE BIT ABOUT WHAT IT MEANS. IF HE IS GOING TO BE ASKED TO TESTIFY FROM A LEGAL STANDPOINT

* * *

**[ANNIBALE 181]**

DID YOU HAVE OCCASION TO INTERACT IN THE INTERAGENCY POLICY WITH RESPECT TO INFANTS IN THOSE NURSERIES WHO TESTED POSITIVE FOR COCAINE?

A. AS THE DIRECTOR OF THE UNIT?

Q. YES.

A. NO, I WAS NOT INVOLVED IN THE DEVELOPMENT OR THE INITIATION OF THAT POLICY.
Q. OKAY. THAT WASN'T QUITE MY QUESTION. MY QUESTION WAS: AS DIRECTOR OF THE UNIT, DID YOU HAVE OCCASION TO DEAL WITH INFANTS IN EITHER OF THOSE NURSERIES TESTING POSITIVE FOR COCAINE AS IT RELATED TO THE INTERAGENCY POLICY?
A. I DON'T BELIEVE THAT I HAD THE OCCASION TO DEAL WITH INFANTS WITH REGARD TO THE INTERAGENCY POLICY THROUGH MY OFFICIAL POSITION AS THE DIRECTOR OF THOSE UNITS.
Q. AS A PHYSICIAN WORKING IN THOSE UNITS?
A. AS A PHYSICIAN I HAVE TAKEN CARE OF PATIENTS WHO WERE EITHER PRENATALLY OR POSTNATALLY INVOLVED WITH THE POLICY, YES.
Q. AND, DOCTOR, IN THAT REGARD, DID YOU HAVE TO DEAL WITH THE CONCEPT OF CHAIN OF CUSTODY?
A. I SUPPOSE SO, ALTHOUGH I'M NOT - I GUESS I DON'T REALLY UNDERSTAND THAT I HAVE TO DEAL WITH IT. I MEAN I DIDN'T FILL OUT PAPERWORK OR ANYTHING LIKE THAT, BUT -
Q. DID YOU COMPLY WITH YOUR UNDERSTANDING OF WHAT CHAIN OF CUSTODY MEANT?

A. I THINK SO.
Q. WITHIN THE INTERAGENCY POLICY?
A. YES, I THINK SO.
Q. AND WHAT DID IT MEAN TO YOU?
A. MY UNDERSTANDING OF THE TERM CHAIN OF CUSTODY WAS THAT IF - IF POTENTIAL EVIDENCE IS COLLECTED, THAT THERE WOULD BE A SPECIFIC GROUP - MY UNDERSTANDING OF CHAIN OF CUSTODY IS, YOU KNOW, WHAT I HAVE SEEN ON TELEVISION AND SUCH THAT THERE IS A SPECIFIC ROUTE AND DOCUMENTATION THAT THAT FOLLOWS.
Q. DOCTOR, IN YOUR CAPACITY AS THE CLINICAL DIRECTOR OF THE NEONATOLOGY - I'M SORRY - YES, AS THE DIRECTOR OF THE NEONATOLOGY FELLOWSHIP TRAINING PROGRAM, WERE YOU THE MENTOR OR SUPERVISOR OF A DR. TRIBBLE?
A. YES, I WAS.
Q. DR. TRIBBLE WAS A MEDICAL DOCTOR?
A. YES, SHE IS AND WAS.
Q. THAT'S FAIR. AND, DOCTOR, THE NEONATOLOGY FELLOWSHIP,

THAT WAS A POST-DOCTORAL TRAINING PROGRAM?
A. YES, SIR.
Q. AND THAT WAS SOMETHING VOLUNTARILY UNDERTAKEN BY DR. TRIBBLE TO FURTHER HER EDUCATION AND TRAINING?
A. YES.
Q. DOCTOR, AS PART OF THAT FELLOWSHIP IN THE ACADEMIC

INSTITUTION AT MUSC, WAS IT EXPECTED THAT DR. TRIBBLE WOULD PUBLISH?

* * *

**[ANNIBALE 237]**

A. I THINK SO, YES.
Q. AND SHE EXPLAINED TO YOU ABOUT THE POLICY?
A. YES, SHE DID.
Q. WAS THERE A POLICE OFFICER PRESENT WHEN SHE EXPLAINED THE POLICY?
A. NO, THERE WASN'T.
Q. COULD YOU EXPLAIN TO THE JURY THE MEDICAL NECESSITY FOR TESTING A NEWBORN FOR DRUGS?
A. I THINK THERE ARE CERTAIN –
MR. WHERRY: OBJECT, YOUR HONOR, SCOPE. NOT COVERED IN MY DIRECT AT ALL.
MS. SHOWERS: HE IS A NEONATOLOGIST.
THE COURT: WELL, I CAN EITHER LIMIT IT OR I CAN PERMIT HER TO ASK IT AS IF ON DIRECT EXAMINATION. AND SINCE IT'S HER WITNESS REALLY, I'LL PERMIT IT.
MR. WHERRY: FINE. GO AHEAD.
THE WITNESS: COULD YOU REPEAT THE QUESTION.
Q. (BY MS. SHOWERS, CONTINUING) SURE. COULD YOU EXPLAIN TO THE JURY THE MEDICAL NECESSITY OF TESTING OR EVEN KNOWING THAT A NEWBORN HAS TESTED POSITIVE FOR DRUGS?

A. THERE ARE CERTAIN MEDICAL CONDITIONS THAT ONE WOULD SEE IN NEWBORN - IN A NEWER BORN INFANT THAT COULD BE THE RESULTS OF EXPOSURE TO DRUGS OR WITHDRAWAL FROM EXPOSURE TO DRUGS THAT COULD PRESENT IN THE FIRST SEVERAL DAYS OF LIFE.
Q. AND AS A NEONATOLOGIST, DO YOU HAVE CONCERNS ABOUT

**[ANNIBALE 238]**

SENDING A CHILD HOME THAT HAS TESTED POSITIVE FOR DRUGS?
A. YES, I WOULD. I THINK THERE - THEY'RE - THERE ARE SOME DATA THAT SUGGEST THAT FAMILIES OF — THE FAMILIES - THAT THERE IS HIGHER RISK OF CHILD ABUSE IN FAMILIES WHERE DRUG ABUSE AND SUBSTANCE ABUSE IS PRESENT.
Q. AND ARE YOU FAMILIAR WITH THE SOUTH CAROLINA CHILD ABUSE LAW?
A. YES.
Q. IN YOUR POSITION AS NEONATOLOGIST DO YOU HAVE OCCASION TO REPORT INCIDENCES OF SUSPECTED CHILD ABUSE AND NEGLECT?
A. YES, I THINK - USUALLY PERTAINING TO DRUG ABUSE, WE USUALLY - WHAT WE USUALLY DO IS REPORT THAT TO OUR SOCIAL SERVICE DEPARTMENT.
Q. AND THAT'S MANDATORY REPORTING REQUIREMENT?
MR. WHERRY: I OBJECT.

THE COURT: IT'S A LEADING QUESTION AND I THINK IT CALLS FOR A CONCLUSION OF LAW. I SUSTAIN THE OBJECTION.

MS. SHOWERS: I WAS JUST ASKING OF HIS UNDERSTANDING OF A NEONATOLOGIST, IF THAT'S HIS UNDERSTANDING.

THE COURT: THAT WASN'T YOUR QUESTION.

MS. SHOWERS: ALL RIGHT, I'LL REPHRASE MY QUESTION.

Q. (BY MS. SHOWERS, CONTINUING) DR. ANNIBALE, IN YOUR POSITION AS A NEONATOLOGIST, WHAT IS YOUR UNDERSTANDING AS TO THE REPORTING REQUIREMENT UNDER THE SOUTH CAROLINA CHILD ABUSE STATUTE?

**[ANNIBALE 239]**

A. MY UNDERSTANDING IS IF A PHYSICIAN OR ANY HEALTH CARE PERSONNEL HAS SOME REASONS TO SUSPECT THAT CHILD ABUSE HAS OCCURRED, THAT THEY'RE REQUIRED TO REPORT THAT TO THE APPROPRIATE AUTHORITIES, INCLUDING THE DEPARTMENT OF SOCIAL SERVICES OR THE POLICE.

Q. AND THAT WOULD INCLUDE A POSITIVE URINE DRUG SCREEN?

MR. WHERRY: I OBJECT TO THE LEADING NATURE OF THE QUESTION.

THE COURT: SUSTAINED.

Q. (BY MS. SHOWERS CONTINUING) CAN YOU TELL ME THE

CIRCUMSTANCES THAT WOULD INCLUDE IN THE NEONATAL UNIT, DOCTOR?
A. IN NEONATAL UNIT IT WOULD BE RELATIVELY LIMITED BECAUSE PARENTS ARE NOT USUALLY WITH THE PATIENT. I GUESS DRUG ABUSE WOULD BE CONSIDERED ONE OF THEM.
Q. AND PRIOR TO THIS POLICY, WERE URINE DRUG SCREENS ROUTINELY PERFORMED ON NEONATES IN THE UNIT?
A. PRIOR TO 1989?
Q. PRIOR TO THE INCEPTION OF THE POLICY?
MR. WHERRY: OBJECTION, YOUR HONOR. THIS WITNESS WASN'T THERE BUT FOR ONE MONTH BEFORE.
MS. SHOWERS: WELL, YOUR HONOR.
THE COURT: IF HE CAN ANSWER IT, FINE. IF HE CAN'T THEN WE'LL FIND OUT.
A. I DON'T KNOW IF I WOULD SAY THEY WERE ROUTINELY DONE ON NEONATES. WHEN THE SITUATION THAT ONE WAS REQUIRED, IT WAS

**[ANNIBALE 240]**

DONE.
Q. AND, DOCTOR, SINCE YOU HAVE BEEN AT MUSC, DURING THE TIME OF THE POLICY, WAS A POLICE OFFICER EVER STATIONED IN THE NEONATAL IC UNIT?
A. NO.
Q. DID A POLICE OFFICER EVER INSTRUCT YOU TO TEST A NEWBORN

UNDER THE INTERAGENCY POLICY?
A. NO.
Q. AND YOU TESTIFIED THAT YOU ARE IN A CONSULTING BASIS TO OTHER HOSPITALS IN CHARLESTON; IS THAT RIGHT?
A. YES, I WAS.
Q. AND AT ANY OF THESE HOSPITALS DID YOU EVER OBTAIN A POSITIVE URINE DRUG SCREEN ON AN INFANT THAT YOU DID NOT REPORT?
A. I DON'T RECALL BEING IN THAT SITUATION.
Q. DR. ANNIBALE, AS TO THE QUESTIONS MR. WHERRY POSED ABOUT THE INFORMATION YOU RECEIVED FROM SHIRLEY BROWN, IS IT FAIR TO SAY THAT THE ONLY NUMBERS YOU OBTAINED FROM SHIRLEY BROWN WAS THE COCAINE POSITIVE NUMBERS?
A. THE ONLY NUMBERS THAT I OBTAINED FROM SHIRLEY BROWN WERE THE IDENTIFICATION OF PATIENTS WHO WERE COCAINE POSITIVE, THAT'S CORRECT.
MS. SHOWERS: NOTHING FURTHER. THANK YOU.
THE COURT: ANYTHING FURTHER FROM THE PLAINTIFF?

REDIRECT EXAMINATION

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

**EXCERPTS FROM TESTIMONY OF STANLEY BAKER**

**[BAKER 608]**

A. I'M A MEMBER OF THE BOARD.
Q. LET ME ASK YOU FIVE QUESTIONS WITH REGARD TO THIS POLICY. THE SPECIFIC SEQUENCE AND EVENTS THAT LED UP TO THE APPROVAL AND IMPLEMENTATION OF THIS POLICY, WAS IT ANY DIFFERENT THAN THE WAY THE MEDICAL UNIVERSITY BOARD HAS APPROVED OTHER POLICIES?
A. NO DIFFERENCE.
Q. WAS THERE ANY DEPARTURE FROM THE NORMAL PROCEDURES, THE NORMAL STANDARDS AND PROCEDURES THAT THE MEDICAL UNIVERSITY HAS IN IMPLEMENTING AND APPROVING THIS POLICY?
A. NO DEPARTURE.
Q. DOES THE MEDICAL UNIVERSITY COMPLY WITH THE MANDATORY REPORTING OF CHILD ABUSE, AND HAS IT SINCE YOU HAVE BEEN ON THE BOARD?
A. IT'S REQUIRED BY THE BOARD THAT THEY DO THAT.
Q. AND HOW LONG HAVE YOU BEEN ON THIS MEDICAL UNIVERSITY BOARD, DR. BAKER?
A. SINCE 1977. NINETEEN YEARS.

Q. IS THE INTERAGENCY POLICY CONSISTENT WITH THE MEDICAL UNIVERSITY NORMS AND STANDARDS AND PHILOSOPHY?

A. YES.

Q. AS YOU UNDERSTAND IT, WHAT WAS THE GOAL THAT WAS HOPED TO BE OBTAINED BY THIS POLICY?

A. TO PROTECT THE MINDS OF THESE UNBORN CHILDREN AND TO HOPEFULLY HELP THE MOTHERS KICK THE HABIT OF COCAINE.

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

**EXCERPTS FROM TESTIMONY OF JUDITH BAYS**

**[BAYS 18]**

MS. SMITH: CAN I ASK FOR A SECOND, DOES THE COURT REPORTER - DID YOU GET MY OBJECTION THERE?

COURT REPORTER: YES.

MS. SMITH: OKAY. THANK YOU. I AM SORRY TO INTERRUPT.

A. THEY CAN BE - THEY CAN BE SMALL IN LENGTH AND SMALL IN WEIGHT, TOO, BUT THERE'S OFTEN A DISPROPORTIONATE SMALL HEAD SIZE, MEANING ALTHOUGH THE BABY ITSELF IS SMALL, THE HEAD IS SMALLER THAN IT SHOULD BE EVEN FOR A SMALL BABY. AND THAT REFLECTS DAMAGE TO THE BRAIN OR POOR BRAIN GROWTH. AND THAT'S THE MOST CONCERNING THING THAT WE SEE.

OTHER THINGS THAT WE SOMETIME SEE ARE RELATED TO WHAT COCAINE DOES IN TERMS OF CUTTING OFF THE BLOOD SUPPLY. WE CALL IT VASOCONSTRICTION. VASO MEANS BLOOD VESSEL AND CONSTRICTION MEANS IT SHUTS IT DOWN. AND

THAT'S THE WAY COCAINE AFFECTS PEOPLE, ADULTS AND BABIES, IS IT - IT CLOSES DOWN THESE SMALL BLOOD VESSELS AND THEN IT SHUTS OFF THE OXYGEN AND - OXYGEN SUPPLY, THE BLOOD SUPPLY, THE FOOD SUPPLY TO WHATEVER WAS BEYOND THAT SHUTDOWN BLOOD VESSEL.

SO IN AN ADULT YOU WOULD CALL THAT STROKE. IF YOU HAD THAT HAPPEN IN YOUR BRAIN, THAT WOULD BE A STROKE. SO PART OF YOUR BRAIN COULD BE DAMAGED OR ACTUALLY DIE. IF IT HAPPENS IN YOUR HEART, IT'S CALLED

**[BAYS 19]**

A HEART ATTACK BECAUSE A PART OF THE MUSCLE IN YOUR HEART DIES. SO WE HAVE SEEN IT IN INFANTS WHERE IT HAPPENS IN THEIR BRAIN. AND THE BRAIN - BRAIN GROWTH IS AFFECTED OR PARTICULAR PARTS OF THE BRAIN ARE KNOCKED OUT.

IF IT - THERE ARE CASE REPORTS - I HAVEN'T SEEN THIS PERSONALLY, BUT THERE ARE CASE REPORTS OF SEVERAL INFANTS WITH HEART ATTACKS RELATED TO MATERNAL USE OF COCAINE. THEN IF IT HAPPENS TO THE GUT, PORTIONS OF THE GUT CAN DIE BEFORE BIRTH. IF IT HAPPENS TO THE

DEVELOPING FINGERS AND TOES OF THE FETUS, THEN THE FINGERS AND TOES WON'T DEVELOP BECAUSE THE BLOOD SUPPLY IS CUT OFF TO THEM. AND THAT'S WHY WE THINK WE GET - WE SEE THESE - WHAT WE CALL LIMB REDUCTION DEFECTS WHERE THEY'RE MISSING FINGERS, TOES OR ACTUALLY PART OF THE ARM OR LEG. IF IT HAPPENS TO THE KIDNEYS, YOU CAN BE - YOU CAN HAVE KIDNEY DAMAGE OR MISSING KIDNEY, IF IT HAPPENS TO THE GENITOURINARY SYSTEM, THEIR REPRODUCTIVE SYSTEM, THEN PART OF THAT CAN BE DAMAGED, TOO.

BUT THOSE ARE THE MOST CONCERNING EFFECTS WE SEE WHEN THE - THE BLOOD AND OXYGEN SUPPLY IS CUT OFF TO A PART OF THE DEVELOPING BABY. THE MOST CONCERNING, OF COURSE, WOULD BE THE HEART OR THE BRAIN. LATER ON, WE SEE SOME BEHAVIORAL AND NEUROLOGIC EFFECTS WHICH ARE VERY CONCERNING TOO.

**[BAYS 20]**

Q. AND ALL OF THESE EFFECTS THAT YOU HAVE DESCRIBED, DR. BAYS, IN YOUR OPINION, TO A REASONABLE DEGREE OF MEDICAL CERTAINTY MOST PROBABLY, ARE THEY A RESULT OF COCAINE EXPOSURE IN UTERO?

A. YES.
MS. SMITH: OBJECTION, IRRELEVANT, PREJUDICIAL. LACK OF FOUNDATION.
Q. WHAT OTHER RISKS DO CHILDREN WHO ARE PRENATALLY EXPOSED TO COCAINE FACE AS THEY GROW AND DEVELOP, DOCTOR?
A. WELL, THEIR - THEY HAVE PARTICULAR LEARNING DISABILITIES. SOME OF THEM, NOT ALL OF THEM. THERE'S A WHOLE SPECTRUM. SOME BABIES MAY APPEAR TO BE NOT AFFECTED AT ALL AND THEN SOME BABIES ARE MORE MILDLY AFFECTED, MORE MODERATELY AFFECTED AND THEN SOME BABIES SEVERELY AFFECTED. SO WE SEE THE WHOLE SPECTRUM. SO I'M GOING TO GIVE YOU WHAT WE HAVE SEEN ON THE MORE WORRISOME END OF THINGS.
WE SEE BABIES THAT ARE - AS THEY GROW ARE HYPERACTIVE AND HAVE ATTENTION DEFICIT DISORDER. THEY HAVE DIFFICULTY FOCUSING ON A TASK AND PAYING ATTENTION TO THE TASK. THEY HAVE DIFFICULTY WITH ORGANIZED PLAY, MEANING, LET'S SAY YOU'RE GOING TO PLAY HOUSE. THEY DON'T UNDERSTAND HOW TO PLAY HOUSE, HOW TO HAVE THE, YOU KNOW, THE DADDY COME HOME AND MOMMY FIX DINNER AND SO

**[BAYS 21]**

ON. THEY CAN'T SEQUENCE. SEQUENCING IS A PROBLEM,
PUTTING THINGS IN ORDER. SO THIS IS FIRST, THIS IS
SECOND, THIS IS THIRD. SO SOCIAL PLAY, INTERACTIVE,
PLAY.

EARLY ON, ONE OF THE TWO THINGS THAT ARE SEEN
IN – AND CAN CONTINUE LATER IN LIFE ARE DIFFICULTIES
WITH - AND THIS IS PART OF FOCUSING - DIFFICULTY WITH
FOCUSING ON THE GAZE. IT'S CALLED GAZE AVERSION WHERE
BABIES WON'T LOOK AND HOLD A LOOK, A GLANCE. AND THIS
CONCERNS US BECAUSE THIS IS PART OF THE BONDING PROCESS
BETWEEN THE MOTHER AND THE INFANT IS FOR THE MOTHER TO
LOOK IN THE BABY'S FACE AND THE BABY TO LOOK BACK. AND
SOME OF THESE INFANTS DON'T WANT - DON'T SEEM TO WANT TO
LOOK AT A FACE, AND WILL LOOK AWAY, WHEREAS NORMAL
BABIES WILL PREFER TO LOOK AT A FACE. AND THAT'S PART
OF THE NORMAL BONDING PROCESS. SO WE'RE CONCERNED IT
MAKES THESE BABIES MORE DIFFICULT TO REAR WHEN THEY'RE
NOT LOOKING AND SMILING AT THE ADULT CARETAKER AND MAKES
THEM AT HIGHER RISK OF ABUSE.

I THINK THE MOST CONSISTENT PATTERN THAT PEOPLE ARE SEEING IS EFFECT ON LANGUAGE. LANGUAGE - AND THIS - THIS IS BOTH LANGUAGE PROCESSING SO THIS IS THE INPUT OF LANGUAGE, THAT IS, A CHILD UNDERSTANDING WHAT YOU'RE ASKING THEM TO DO. SOMETIMES DON'T SEEM TO BE ABLE TO PROCESS THE VERBAL INFORMATION COMING IN WELL.

**[BAYS 22]**

THEN THERE'S ALSO A PRODUCTION DEFECT THAT SOME OF THEM DON'T SEEM TO BE ABLE TO PRODUCE LANGUAGE WELL. AND PART OF IT IS A MOTOR DIFFICULTY WITH MOVEMENTS OF THE MOUTH AND THE TONGUE, BUT PART OF IT IS WHAT WE CALL A CENTRAL PROCESSING DEFECT, LI[illegible] THE CENTRAL COMPUTER OF THE BRAIN IS NOT PRODUCING - PROCESSING AND PRODUCING LANGUAGE NORMALLY. SO WHEN - IN ITS MOST SEVERE FORM, WE SEE WHAT WE CALLED PARROTING WHERE A CHILD SEEMS TO SPEAK FLUENTLY, BUT THEN IF YOU EXAMINE THEM A LITTLE MORE CAREFULLY AND QUESTION THEM A LITTLE MORE CAREFULLY, IT TURNS OUT THAT THEY'RE JUST RECITING BACK WHAT THEY'VE HEARD.

I'LL GIVE YOU AN EXAMPLE. I SAW A CHILD, A COCAINE AFFECTED CHILD IN THE OUTPATIENT CLINIC A FEW YEARS AGO AND SHE WAS ABOUT THREE. AND WHEN I WALKED IN THE ROOM I SAID, " HI, HOW ARE YOU?" AND SHE SAID, "HI, HOW ARE YOU?" AND I SAID, "WHAT'S YOUR NAME?" AND SHE SAID, "WHAT'S YOUR NAME?" AND UP TO THERE - UP TO THAT POINT, I THOUGHT SHE WAS DOING PRETTY WELL FOR A THREE YEAR OLD BECAUSE SHE COULD PRODUCE FULL SENTENCES. BUT THEN IT TURNED OUT SHE COULDN'T SPEAK SPONTANEOUSLY. SHE COULD ONLY PARROT BACK OR RECITE BACK WHAT SHE HAD HEARD FROM ME. SO SHE HAD NO GOOD SPONTANEOUS SPEECH OF HER OWN WHICH IS VERY, VERY WORRISOME PROBLEM.

AND SO IN TALKING TO PEOPLE AROUND THE COUNTRY

**[BAYS 23]**

WHO ARE WORKING WITH COCAINE AFFECTED INFANTS AND FOLLOWING THEM LONG TERM, LANGUAGE IS ONE OF THE CONSISTENT THINGS THAT WE'RE SEEING. AGAIN, NOT IN EVERY CHILD, BUT IN MANY CHILDREN.

Q. WHAT ABOUT IN THE HOME, DOCTOR, HAVE YOU LOOKED

AT THE RISK OF CHILD ABUSE AND NEGLECT TO CHILDREN THAT HAVE BEEN EXPOSED TO COCAINE IN UTERO?

MS. SMITH: AGAIN, I OBJECT TO THIS LINE OF QUESTIONING AS IRRELEVANT AND PREJUDICIAL. IT'S SIMPLY NOT AT ISSUE IN THIS CASE.

Q. GO AHEAD, DOCTOR.

A. I LOOKED AT THIS IN A STUDY THAT WE DID AND THAT WE'RE STILL DOING AND THEN THERE IS SOME LITERATURE THAT EXISTS FROM OTHER PARTS OF THE COUNTRY ON THIS ISSUE. THE RISK OF ABUSE AND NEGLECT TO CHILDREN WHO ARE BEING RAISED IN SUBSTANCE ABUSING FAMILIES IS DEFINITELY HIGHER, SOMEWHERE BETWEEN TWO AND FIVE TIMES HIGHER DEPENDING ON THE STUDY. ABOUT THREE TIMES HIGHER.

Q. WHAT ABOUT THE PARENTING BY THESE CHILDREN IN TERMS OF FOLLOW-UP MEDICALLY, IS THERE ANY CORRELATION THERE?

A. YES.

MS. SMITH: SAME OBJECTION. ALSO OBJECT AS TO VAGUE.

**[BAYS 24]**

A. YES.

Q. GO AHEAD, DOCTOR.

A. THERE - THERE IS SOME INFORMATION IN THE MEDICAL LITERATURE INDICATING THAT MEDICAL FOLLOW UP IS POORER IN TERMS OF NUMBERS OF IMMUNIZATIONS OR MISSED MEDICAL APPOINTMENTS.

Q. DOCTOR, CAN A SINGLE DOSE OF COCAINE BE HARMFUL TO A DEVELOPING FETUS?

A. YES.

Q. CAN IT ACTUALLY KILL EITHER THE BABY OR THE MOTHER OR BOTH?

A. YES.

MS. SMITH: OBJECTION, IRRELEVANT AND PREJUDICIAL.

Q. DOCTOR, HAVE YOU HAD AN OPPORTUNITY TO REVIEW WHAT HAS COME TO BE KNOWN AS THE INTERAGENCY POLICY?

A. FROM MEDICAL UNIVERSITY OF -

MS. SMITH: OBJECTION, VAGUE.

A. IS THIS THE -

Q. YES, THE MEDICAL UNIVERSITY OF SOUTH CAROLINA'S INTERAGENCY POLICY, HAVE YOU HAD AN OPPORTUNITY TO REVIEW THAT?

A. I HAVE.

Q. AND CAN YOU TELL THE JURY IF YOU'VE REACHED AN OPINION WHETHER OR NOT THIS WAS A REASONABLE APPROACH TO

A MEDICAL CRISIS?
A. I BELIEVE IT WAS AND IT'S SIMILAR -
MS. SMITH: OBJECT AS TO - EXCUSE ME. I'M SORRY. I WAS TRYING TO GET MY OBJECTION IN, DR. BAYS.
THE WITNESS: GO AHEAD.
MS. SMITH: I OBJECT AS VAGUE.
Q. GO AHEAD, DOCTOR.
MS. SMITH: THAT'S ALL.
A. THE APPROACH IS SIMILAR TO ONE THAT MANY HOSPITALS AROUND THE COUNTRY, INCLUDING OURS, HAVE USED. SOME - THERE ARE SOME SPECIFIC DIFFERENCES, BUT IT'S BASICALLY VERY SIMILAR.
Q. DOCTOR, WHY IS THERE A NEED TO DEVELOP A POLICY TO TEST WOMEN FOR DRUGS DURING PREGNANCY?
MS. SMITH: OBJECTION, VAGUE.
A. WELL, THE - IN THE MEDICAL COMMUNITY WE FEEL THAT THIS IS A HIGH MEDICAL RISK FACTOR TO INFANTS AND TO THEIR MOTHERS. HUT AS A PEDIATRICIAN, I'M PRIMARILY CONCERNED WITH THE INFANTS. AND IT WOULD BE SIMILAR TO TESTING THAT WE DO FOR GENETIC DEFECTS OR DEFECTS IN CHEMISTRY LIKE WHEN BABIES ARE BORN, BY LAW WE HAVE TO TEST THEM - WE TAKE SOME BLOOD FROM THEIR - FROM ALL THE HEELS OF NEWBORNS AND WE TEST FOR DISEASES LIKE FENAL

KETONURIA, SICKLE-CELL DISEASE. THERE'S A WHOLE PANEL
OF ABOUT TEN OR 12 DIFFERENT DISEASES THAT WE TEST FOR.

* * *

**[BAYS 65]**

Q. GO AHEAD, DOCTOR.
MS. SMITH: IRRELEVANT AND PREJUDICIAL. LACK
OF FOUNDATION.
Q. IN YOUR OPINION AS A MEDICAL DOCTOR.
A. COCAINE - ONE DOSE CAN - CAN KILL AN INFANT OR
A MOTHER. THAT'S ALSO TRUE OF HEROINE AND METHADONE.
BUT I - I THINK THE CONCERN WE HAD ABOUT COCAINE WAS IT
WAS - THE USE OF IT WAS REACHING EPIDEMIC PROPORTION.
IT WAS A NEW MEDICAL CRISIS IN THE - IN THE 1980S AND AN
ONGOING CRISIS NOW BECAUSE OF THE SHEAR NUMBERS.
Q. THE CRISIS BEGAN IN THE MID - I'M SORRY,
DOCTOR.
A. BECAUSE OF THE SHEAR -
Q. THE CRISIS BEGAN IN THE MID TO LATE - IN THE
MID TO LATE 1980S; IS THAT RIGHT?
A. YES.
MS. SMITH: OBJECTION, LACK OF FOUNDATION.
A. WE BEGAN SEEING -
Q. DOCTOR, -
A. WE BEGAN SEEING INFANTS -

Q. GO AHEAD.
A. - HERE FOR THE FIRST TIME WITH COCAINE IN THEIR URINE, I WOULD SAY, ABOUT 1985. AND THEN THE NUMBERS RAPIDLY INCREASED. 1986 AND 1987 IS WHEN WE HAD OUR FIRST MEDICAL SOCIAL SERVICES AND LEGAL CONFERENCE

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

**EXCERPTS FROM TESTIMONY OF SHIRLEY BECKETT**

**[BECKETT 227]**

(TESTIMONY EXCERPT OF SHIRLEY JACKSON BECKETT 12-96.)

- - -

SHIRLEY J. BECKETT, PLF. WITNESS, SWORN.

DIRECT EXAMINATION

BY, MS. DUNN:

Q. WOULD YOU STATE YOUR NAME, PLEASE.

A. SHIRLEY ANNE JACKSON BECKETT.

Q. AND WHERE ARE YOU EMPLOYED?

A. AT THE DEPARTMENT OF ALCOHOL AND OTHER DRUG SERVICES OF CHARLESTON COUNTY.

Q. DOES THAT HAVE A SHORT NAME?

A. DAODAS.

Q. DAODAS?

A. YES.

Q. DID DAODAS USE TO BE SOMETHING ELSE?

A. YES, IT USED TO BE THE CHARLESTON COUNTY SUBSTANCE ABUSE COMMISSION.

Q. DID THAT HAVE A SHORTER NAME?

A. CCSAC.

Q. WHAT IS DAODAS NOW, IS THAT WHAT CCSAC USED TO BE?

A. EXACTLY.

Q. AND YOUR WORK - YOU SAID THAT YOU ARE WORKING AT DAODAS NOW?
A. YES.
Q. WHAT IS YOUR JOB AT THE PRESENT TIME?

**[BECKETT 228]**

A. PRESENTLY I'M TRAINING COORDINATOR.
Q. TRAINING COORDINATOR FOR WHAT?
A. FOR THE AGENCY. I ESTABLISH TRAINING EVENT FOR THE AGENCY AND COMMUNITY AT LARGE THAT ARE RELEVANT TO ADDICTION, COUNSELING SKILLS, DEVELOPMENT, AWARENESS OF ALCOHOL AND OTHER DRUG ISSUES.
Q. AND WHAT KIND OF INSTITUTION IS DAODAS?
A. IT IS A THERAPEUTIC INSTITUTION FOR PERSONS WITH ALCOHOL AND OTHER DRUG PROBLEMS OFFERING COUNSELING, EDUCATION, INPATIENT AND OUTPATIENT SERVICES.
Q. IS IT A PRIVATE INSTITUTION OR GOVERNMENT?
A. IT'S A COUNTY GOVERNMENT INSTITUTION PRESENTLY.
Q. DID IT HAVE ANY OTHER CONFIGURATION AT A PRIOR TIME?
A. IT IS HARD TO SAY. WE WEREN'T PRIVATE, WE WEREN'T COUNTY, WE WERE SUPPORTED WITH STATE AND FEDERAL FUND AND THEREFORE CONSIDERED A STATE INSTITUTION, BUT NOT UNDER STATE

AUSPICY PRIOR TO THREE YEARS AGO.
Q. IN THE SPRING OF 1989, DID YOU WORK FOR CCSAC?
A. YES.
Q. WHAT DID YOU DO THERE?
A. I WAS ASSISTANT PROGRAM MANAGER TO THE OUTPATIENT SEVICES DIRECTOR.
Q. AND WHAT DID YOU DO IN THAT JOB?
A. COUNSELING, MANAGEMENT OF COUNSELORS, OVERSIGHT - ASSISTING REALLY IN OVERSIGHT OF THE PROGRAM FOR ALL PERSONS

* * *

**[BECKETT 230]**

TIME THERE WAS A DISCUSSION OF WHETHER OR NOT THERE WOULD BE A POLICY CONCERNING WOMEN WITH SUBSTANCE ABUSE PROBLEMS. THE CONCERN AT THAT POINT STATED WAS THAT PERSONS NEEDED TO BE OFFERED SERVICES AND WERE NOT VOLUNTEERING FOR SERVICES. AND SO WE WERE INVOLVED REALLY TO OFFER THE SERVICES TO THOSE INDIVIDUALS.
Q. AND WHEN DID THIS MEETING TAKE PLACE, TO THE BEST OF YOUR KNOWLEDGE?
A. IT WAS LATE - LATE 1989.
Q. AND WHERE DID THE MEETING TAKE PLACE?
A. AT THE MEDICAL UNIVERSITY.
Q. AND YOU SAID THAT THERE WERE PEOPLE THERE FROM THE MEDICAL UNIVERSITY?

A. THE PERSONS I RECALLED AT THAT MEETING WERE DR. SCHUH AND SHIRLEY BROWN FROM MUSC, CHIEF GREENBERG WAS PRESENT, AND ANOTHER PHYSICIAN THERE, AND I DON'T REMEMBER WHO HE WAS. SOMEONE FROM THE SOLICITOR'S OFFICE, MR. CONDON, AND MYSELF, MR. JOHNSON AND DOROTHY ELLIS.
Q. DO YOU RECALL WHAT WAS DISCUSSED AT THAT INITIAL MEETING?
AT CAN GIVE YOU THE GIST OF THE CONVERSATION BUT I DON'T REMEMBER VERBATIM.
Q. CAN YOU GIVE ME THE GIST OF THE CONVERSATION?
A. WHAT I RECALL IS THAT THERE WAS CONCERN AS TO WHETHER OR NOT A POLICY FOR ARRESTS SHOULD BE PLACED - PUT IN PLACE FOR WOMEN WHO WERE DETERMINED THROUGH URINALYSIS TO HAVE

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**[BECKETT 232]**

Q. WHAT IS IT?
A. A REFERRL PROCEDURE FOR THE PRENATAL CLINIC AT MUSC THAT WE DEVISED.
Q. WHO IS WE?
A. CCSAC.
Q. AND CAN YOU BE MORE SPECIFIC THAN THAT IN TERMS OF LIKE INDIVIDUAL NAMES?
A. MS. ELLIS AND I DEVISED THIS.
Q. WHEN YOU SAY I DEVISED IT,YOU MEAN YOU WROTE IT?
A. YES.

Q. OKAY. AND WHEN DID YOU WRITE THIS?
A. I BELIEVE - I CAN'T REMEMBER THE DATES, BUT IT WAS SOMEWHERE IN EARLY '90 OR MID '90. 1990.
Q. AND WHAT DID YOU DO WITH IT?
A. THIS WAS GIVEN TO SHIRLEY BROWN AND DR. SCHUH, AND IN ORDER THAT WE BE ABLE TO OFFER ASSESSMENTS AFTER - AFTER INDIVIDUALS WHOM THEY HAD IDENTIFIED AT THE CLINIC, AT THE PRENATAL CLINICS AT MUSC - WERE REFERRED. IT WAS A PROCEDURE THAT WE SET UP IN ORDER THAT WE BE ABLE TO DO THE ASSESSMENTS AND PLACEMENT OF THE INDIVIDUALS REFERRED.
Q. AND DID YOU ACTUALLY SEND THAT TO THOSE PEOPLE?
A. YES.
MS. DUNN: I MOVE THIS INTO EVIDENCE.
MS. COMPANION: YOUR HONOR, WE OBJECT TO THE THIRD PAGE AS BEING IRRELEVANT.

**[BECKETT 233]**

THE COURT: WHEN YOU SAY ASSESSMENT AND PLACEMENT, WHAT DO YOU MEAN?
THE WITNESS: IN ORDER TO DETERMINE SOMEONE'S NEED FOR SERVICE.
THE COURT: UMM-HMM.
THE WITNESS: A CLINICAL ASSESSMENT IS DONE. YOU

GET DEMOGRAPHIC INFORMATION, DRUG HISTORY TAKEN, FAMILIAL HISTORY TAKEN, MEDICAL HISTORY TAKEN AND THEN URINALYSIS AS WELL TO DETERMINE IF IN FACT OUR SERVICES ARE THE APPROPRIATE SERVICE. AND BEYOND THAT, WHETHER OR NOT THEY WOULD BE APPROPRIATE FOR OUTPATIENT OR INPATIENT CARE.

THE COURT: THAT'S THE ASSESSMENT?

THE WITNESS: YES.

THE COURT: WHAT WAS OTHER PART?

THE WITNESS: PLACEMENT.

THE COURT: AFTER YOU DO THE ASSESSMENT?

THE WITNESS: WE DETERMINE THEN WHICH IS THE BEST SERVICE, WHETHER IT BE OUTPATIENT OR INPATIENT FOR THE INDIVIDUALS.

THE COURT: AND THIS IS THE PROCEDURE WHEREBY YOU DID THAT?

THE WITNESS: WHAT WE TALK ABOUT HERE WAS HOW THE MEDICAL UNIVERSITY WOULD IDENTIFY THE CLIENTS,THEN OUR INTAKE COUNSELOR. AND AT THAT TIME WHEN THIS WAS WRITTEN THERE WERE TWO OF US, BUT I WAS PRIMARILY THE PERSON DOING THE

**[BECKETT 234]**

ASSESSMENTS.

THE COURT: I CAN'T- IT'S NOT IN EVIDENCE YET.
LET ME SEE IT, IF YOU WILL.
THE WITNESS: OKAY.
THE COURT: WHAT IS YOUR OBJECTION?
MS. COMPANION: YOUR HONOR, WE OBJECT TO THE THIRD PAGE AS NOT BEING RELEVANT, BUT WE DON'T OBJECT TO THE FIRST TWO PAGES.
THE COURT: WHAT ABOUT THAT?
MS. DUNN: YOUR HONOR, I BELIEVE THEY'RE PART OF THE SAME DOCUMENT, BUT I MAY HAVE TO ASK THE WITNESS TO EXPLAIN HOW THEY ARE.
THE COURT: AND YOUR OBJECTION TO THAT IS WHAT?
MS. COMPANION: IT'S NOT MY UNDERSTANDING THAT, THEY'RE THE SAME DOCUMENT. AND -
THE COURT: IT NOT YOUR UNDERSTANDING WHAT?
MS. COMPANION: I SORRY. IT'S NOT MY UNDERSTANDING THAT THEY ARE ALL THREE FROM A CONTINUOUS DOCUMENT, BECAUSE THE THIRD PAGE HAS PAGE 17 AT THE BOTTOM AND OTHER TWO PAGES ARE NOT NUMBERED.
THE COURT: LET'S ASK THE WITNESS.
THE WITNESS: THEY ARE SEPARATE DOCUMENTS.
THE COURT: OKAY.
SO WHAT YOU SAID, WHAT YOU IDENTIFIED REFERS TO PAGE

25 1 THAT YOU'RE HOLDING UP?

**[BECKETT 235]**

1 THE WITNESS: YES, SIR.
2 THE COURT: WHAT ABOUT PAGE 2?
3 THE WITNESS: PAGE 2 IS PROPOSAL FOR EDUCATION FOR
4 THE OB/GYN CLINIC.
5 THE COURT: SO WHAT YOU'RE DOING IS OFFERING PAGE 1
6 AND TWO WHICH THERE IS NO OBJECTION. MARK IT IN.
7 DEPUTY CLERK: PLAINTIFF'S EXHIBIT NUMBER 9 IN
8 EVIDENCE.
9 Q. (BY MS.DUNN,CONTINUING) I HAVE RETURNED THAT DOCUMENT
10 TO YOU. DOES THIS DOCUMENT INCLUDE ANY PROVISION FOR ANY
11 ARREST OR THREAT OF ARREST IN THE REFERRAL OR ASSESSMENT?
12 A. IT DOES NOT.
13 Q. MS. BECKETT, IN THE END OF SEPTEMBER 1989 HUGO STRUCK
14 THIS AREA; IS THAT CORRECT?
15 A. UMM-HMM.
16 Q. WHAT EFFECT DID THAT HAVE TO CCSAC?
17 A. WE WERE OUT OF OPERATIONS FOR TWO, ALMOST THREE WEEKS.
18 DURING THAT PERIOD OF TIME OUR CLIENTS COULD NOT BE SERVED.
19 OUR OUTPATIENT CLIENTS WERE NOT ALLOWED IN THE BUILDING.
20 Q. DID YOU HAVE ANY REALISTIC WAY OF TAKING ON NEW CLIENTS
21 AT THAT TIME?

A. NO, WE DID NOT.
Q. DID THIS TIME FRAME INCLUDE THE EARLY WEEKS OF OCTOBER 1989?
A. I THINK IT WENT INTO THE SECOND WEEK OF OCTOBER. WE WERE

**[BECKETT 236]**

TRYING TO OPERATE MINIMALLY BECAUSE OF THE DAMAGE TO THE BUILDINGS.
Q. YOU HAVE DESCRIBED HAVING ATTENDED A MEETING WHEN THERE WAS DISCUSSION ABOUT THE FORMULATION OF A WORKING AGREEMENT BETWEEN THE PARTIES THAT WERE AT THAT MEETING?
A. UMM-HMM.
Q. DID YOU HAVE OCCASION TO LEARN THAT A WORKING OPERATION WAS IN PLACE?
A. MR. JOHNSON INFORMED US OF THAT. AND AT THAT POINT THAT HE DID INFORM US THAT WE NEEDED TO ESTABLISH A COUNSELING ARM OR ESTABLISH PERSONS TO DO THE COUNSELING OF WOMEN WHO WOULD BE REFERRED.
Q. WHEN DID YOU - WHEN DID YOU PERSONALLY LEARN OF THE FIRST EVENT, ARREST BEING USED UNDER THIS POLICY?
A. ON TELEVISION. ACTUALLY THE FIRST THAT I HEARD OF IT WAS ON TELEVISION. I DID NOT HEAR FROM THE STAFF AT MUSC.
Q. HAD THERE BEEN ANY CONTACT MADE DIRECTLY, YOU KNOW, WITH

YOU TO LET YOU KNOW THIS PERSON MIGHT BE ON HER WAY?
A. THE PERSONS WHO WERE ARRESTED?
Q. YES.
A. NO
Q. HOW DID THEY GET TO YOU?
A. ONE PERSON WHO WAS ARRESTED GOT TO US THROUGH A REFERRAL FROM THE COUNTY JAIL.
Q. DID CCSAC IN FACT DO WHAT IT COULD TO RESPOND TO THESE

**[BECKETT 237]**

REFERRALS?
A. PERSONALLY I SAW TWO WOMEN IN THE HOSPITAL PRIOR TO DELIVERY TO DO ASSESSMENTS AND INFORM THEM OF THE PLACEMENT. AND GAVE THEM THE PLACEMENT AFTER THEY DELIVERED IN ORDER FOR THEM TO COME OVER TO OUR OFFICE,WHICH IS RIGHT ACROSS THE STREET FROM MUSC UPON THEIR RELEASE TO MEET THEIR COUNSELOR. ON SATURDAY I WAS CALLED IN TO COME AND DO AN ASSESSMENT. AND THAT WAS THE INITIATING STAGES OF OUR INVOLVEMENT. BEYOND THAT, WE GOT OUR INTAKE PERSON ESTABLISHED WE HAD TO SET ASIDE EXTRA HOURS TO DO THAT. WE HAD TO PULL TWO COUNSELORS WHO WERE DOING OTHER COUNSELING TO OFFER SERVICES SPECIFICALLY TO THE POPULATION THAT WAS BEING REFERRED.
SO WITHIN THE FIRST SIX MONTHS OF US ASSUMING

RESPONSIBILITY FOR THOSE REFERRALS, THERE WERE TWO OF US INVOLVED. AND AFTER THAT THERE WERE FOUR OF US INVOLVED.

Q. IN OCTOBER OF 1989, WAS THERE A PROGRAM IN PLACE THAT WAS SPECIFICALLY DESIGNED FOR WOMEN WHO WERE PREGNANT AND HAD COCAINE PROBLEMS?

A. NO.

Q. WHAT WAS - WHAT WAS IT?

A. OUR SERVICES AT THAT TIME WERE GENERIC. WE OFFERED COUNSELING, INDIVIDUAL FAMILY, GROUP TO ANYONE WITH ANY ADDICTIONS. QUITE CANDIDLY, WE WERE GREEN. WE DIDN'T KNOW THAT COCAINE ADDICTION WAS SO SEVERE. AND LEARNED THROUGH THE PROCESS OF WORKING WITH THE CLIENTS EXACTLY WHAT WE WERE UP

**[BECKETT 238]**

AGAINST IN TERMS OF HAVING TO OFFER DAILY CONTACT IN ORDER TO ARREST THE ADDICTION. SO WE WERE FLYING AT THE SEAT OF OUR PANTS FOR AWHILE THERE.

Q. DID CCSAC HAVE ANY INPATIENT, LONG-TERM INPATIENT TREATMENT THAT WAS AVAILABLE?

A. YES, WE DID. OUR FAMILY CARE UNIT WAS IN MORRIS VILLAGE IN COLUMBIA. ALSO DEPENDED, THOUGH, AT THAT TIME ON TWO ISSUES. FIRST INVOLVED MEDICAID WAS NOT REIMBURSING

SERVICES. AND, SECONDLY, IT DEPENDED ON IF THE WOMEN WERE IN THE LAST TRIMESTER, MOST PLACES WOULD NOT TAKE THEM. THE CONCERN OF COURSE WAS THE HAZARD TO THE MOTHER AND THE CHILD.

SO IT WAS REALLY DIFFICULT FOR US TO GET PEOPLE INTO INPATIENT CARE IF THEY WERE SEVEN OR EIGHT MONTH INTO THEIR PREGNANCY.

Q. IN THE FALL OF 1989, WERE SERVICES AT CCSAC FREE?

A. YES AND NO. OUR SERVICES HAVE ACTUALLY NEVER BEEN FREE. YOU QUALIFY FOR SERVICES BY INDIGENCY OR EVIDENCE OF MINIMAL INCOME. SERVICES WERE OFFERED TO THESE WOMEN MAINLY BECAUSE THEY HAD MEDICARE OR MEDICAID OR BECAUSE THEY HAD ZERO INCOME.

Q. DURING THE TIME THAT THE POLICY WAS IN PLACE, DID THE SERVICES THAT WERE AVAILABLE IN THIS COMMUNITY CHANGE?

A. OURS INCREASED. WE HAD DEVELOPED A NEW PROGRAM SPECIFICALLY FOR THE WOMEN WE WERE TREATING, AND IT HAPPENED WITHIN A COUPLE OF YEARS THAT ALSO THERE WERE MEN REFERRED BY

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**[BECKETT 240]**

A. NO, I DID NOT. FROM PHYSICIANS AND PRIVATE ENTITIES AND THOSE -

MS. COMPANION: YOUR HONOR, I DON'T SEE WHY IT'S RELEVANT.

THE COURT: I DON'T SEE WHY IT RELEVANT. IF YOU'VE GOT RELEVANT QUESTIONS, LET'S ASK THEM.

MS. DUNN: I HAD TO ESTABLISH WHAT SHE WAS DOING

THE COURT: NO, I DON'T THINK THAT'S RELEVANT. YOU DIDN'T NEED TO ESTABLISH, THAT'S NOT RELEVANT. LET'S GO TO SOMETHING ELSE.

MS. DUNN: I BELIEVE THAT IT WAS. I BELIEVE THAT IT WILL-

THE COURT: LET'S PROCEED.

Q. (BY MS. DUNN, CONTINUING) IN YOUR DOCUMENTATIONOF THE REFERRALS, DID YOU KEEP TRACK OF WHICH REFERRALS CAME UNDER THE POLICY FROM THE MEDICAL UNIVERSITY?

A. WE DID.

Q. DID YOU GET REFERRALS UNDER THE POLICY FROM THE MEDICAL UNIVERSITY IN THE - IN THE TIME PERIOD THAT YOU WERE COLLECTING THE DOCUMENTATION, DID YOU GET ANY REFERRALS UNDER THE POLICY FROM ANY SERVICE AT THE MEDICAL UNIVERSITY OTHER THAN THE HIGH-RISK OB/GYN CLINIC?

A. THERE WAS SOME NURSES WHO REFERRED OTHER THAN OB/GYN.

Q. DID THEY COME UNDER THE POLICY?

A. NO.

**[BECKETT 241]**

Q. HOW DID THEY COME?
A. PERSONS WHO KNEW THEM AT THE HOSPITAL OR SOMEONE THEY MAY HAVE RUN INTO THAT THE HOSPITAL REFERRED THEM. BUT THEY HAD NOT SIGNED THE DOCUMENT, THEY WERE NOT REFERRED THROUGH THE POLICY.
Q. WHEN YOU SAY THEY HAVEN'T SIGNED THE DOCUMENT, WHAT ARE YOU REFERRING TO?
A. THE DOCUMENT THAT WAS REQUIRED AT THAT POINT STATED THAT THEY HAD REVIEWED THE FILM, THAT THEY WERE INFORMED OF THE RISK TO THE PREGNANCY. THAT THEY WERE ALSO AWARE THAT THEY COULD BE ARRESTED IF THEY DID NOT FOLLOW THROUGH.
Q. AND WITH WOMEN WHO WERE REFERRED UNDER THE POLICY FROM THE MEDICAL UNIVERSITY, WAS THERE A PROGRAM IN PLACE TO REPORT WHETHER OR NOT THEY WERE CONTINUING IN SUBSTANCE ABUSE TREATMENT?
A. I DON'T REMEMBER WHAT THE ACRONYM WAS FOR, BUT IT'S CALLED SCAN, IT'S A CASE CONSULTATION BETWEEN PROFESSIONALS WHO WERE INVOLVED WITH THE TREATMENT OF THE PERSONS REFERRED.
Q. AND WHAT - CAN YOU TELL ME WHAT IS A SCAN?
A. WE MET ONCE A MONTH AND DURING THAT PERIOD OF TIME THERE

WAS A DSS WORKER, SOMEONE FROM CHARLESTON COUNTY HEALTH DEPARTMENT, SOMEBODY FROM CHARLESTON COUNTY MEMORIAL HOSPITAL, AN OB/GYN CLINIC NURSE, SOCIAL WORKER, I -AND OUR AGENCY DISCUSSING THE TREATMENT BEING OFFERED, WHETHER IT BE OUR

**[BECKETT 242]**

SERVICES OR OB/GYN SERVICES OR DSS SERVICES COALESCING IN A SENSE TO BE SURE THAT WE WERE AIDING OTHERS TO HELP THE PERSONS REFERRED. AND SO MONTHLY WE GAVE REPORTS. EACH OF US GAVE REPORTS ON WHAT THE ENTITIES WERE DOING TO ASSIST. AND MY RESPONSIBILITY WAS TO INFORM WHETHER THE PERSONS WERE ATTENDING OR NOT ATTENDING, THE RESULT OF URINALYSIS.

Q. AND TO WHOM DID YOU INFORM? WHO WERE YOU REPORTING?

A. THE PERSON INITIALLY IN CHARGE OF THE MEETING WAS SHIRLEY BROWN BUT WITHIN FIVE OR SIX MONTHS, THE SOLICITOR'S OFFICE HAD SOMEONE THERE WHO WAS TAKING THE INFORMATION. SOCIAL WORKER ASSIGN THROUGH THE SOLICITOR'S OFFICE.

Q. DID YOU, IN YOUR WORK WITH REFERRALS UNDER THIS POLICY, DID YOU EVER MAKE REPORTS OF FAILURE TO PARTICIPATE IN THE

SUBSTANCE ABUSE DIRECTLY TO THE POLICE?
A. NO.
Q. DID - WHAT ROLE, IF ANY, DID YOU HAVE, ANY DETERMINATION AS TO WHETHER SOMEONE WAS SUBJECT TO ARREST UNDER THE POLICY?
A. WE DID NOT. THAT WAS - THAT WAS NOT UNDER OUR JURISDICTION.
MS. DUNN: BEG THE COURT'S INDULGENCE.
Q. (BY MS. DUNN, CONTINUING) MS. BECKETT, ARE YOU FAMILIAR WITH THE FEDERAL DRUG CONFIDENTIALITY STATUTES?
A. YES, I AM.
Q. AS THEY APPLY TO SUBSTANCE ABUSE TREATMENT FACILITIES?
A. YES.

* * *

**[BECKETT 269]**

THE COURT: I DIDN'T KNOW WHAT THE POLICY WAS.
MR. WHERRY: THAT'S ONE OF THE THINGS THAT DR. SHAPIRO TESTIFIED TO BEFORE I BUY HER A PLANE TICKET FROM SAN FRANCISCO TO COME BACK, I'M JUST INQUIRING TO WHETHER IT WOULD BE APPROPRIATE IN THE TIME FRAME OF THE TRIAL TO HAVE HER BACK ON MONDAY. SHE IS NOT AVAILABLE TOMORROW AND FRIDAY.
THE COURT: I THINK SO.
MR. WHERRY: I CAN HAVE HER HERE ON MONDAY.

THE COURT: THERE WERE SOME OTHER REASONS.

MR. WHERRY: WHICH WAS DR. SHAPIRO'S.

THE COURT: THERE WERE JUST - BUT THE RECORD WILL SHOW WHAT THEY WERE. BUT I THINK MONDAY WOULD BE FINE.

MR. WHERRY: FINE.

MS. DUNN: NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: CROSS-EXAMINATION?

CROSS-EXAMINATION

BY MS. COMPANION:

Q. GOOD AFTERNOON, MS. BECKETT.

A. YES.

Q. IT WAS YOUR JOB TO SET UP THE PROGRAM INITIALLY OVER AT CHARLESTON COUNTY SUBSTANCE ABUSE COMMISSION TO HELP MEET THE GOALS OF THE POLICY AT MUSC AND TO TREAT THE WOMEN WHO WERE REFERRED TO SUBSTANCE ABUSE; ISN'T THAT CORRECT?

A. CORRECT.

Q. AND YOU COUNSELED SOME OF THOSE WOMEN YOURSELF

**[BECKETT 270]**

INDIVIDUALLY, DIDN'T YOU?

A. YES, I DID.

Q. AND SOME OF THOSE INDIVIDUALS REFERRED FROM MUSC DID SUCCESSFULLY COMPLETE TREATMENT AT CHARLESTON COUNTY SUBSTANCE ABUSE TREATMENT?

MS. DUNN: OBJECTION, YOUR HONOR. I DON'T KNOW WHAT THIS IS RELEVANT TO.

THE COURT: WHAT?

MS. DUNN: I OBJECT TO THE RELEVANCE.

THE COURT: NO. NO. I OVERRULE THE OBJECTION.

Q. BY (MS. COMPANION, CONTINUING) I'LL REPEAT MY QUESTION. SOME OF THE INDIVIDUALS REFERRED FROM THE MEDICAL UNIVERSITY, DID SUCCESSFULLY COMPLETE SUBSTANCE ABUSE TREATMENT, DIDN'T THEY?

A. YES, THEY DID.

Q: AND IT'S YOUR OPINION THAT THE TREATMENT AVAILABLE AT CHARLESTON COUNTY SUBSTANCE ABUSE IN 1989 WAS ADEQUATE TO MEET THE NEEDS OF THOSE SUBSTANCE-ABUSING PREGNANT WOMEN?

MS. DUNN: OBJECTION,.

THE COURT: I OVERRULE THE OBJECTION. IT'S NOT ONLY RELEVANT, IT'S - IT'S SOMETHING THAT YOU HAVE OFFERED EVIDENCE ON.

MS. DUNN: THIS PERSON HAD NOT BEEN QUALIFIED AS AN EXPERT IN GIVING THAT SORT OF OPINION. I DIDN'T ELICIT-

THE COURT: YOU OBJECTED ON THE GROUND OF RELEVANCE

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**[BECKETT 272]**

MEET THE LEVEL OF BEING ABLE TO EXPRESS OPINIONS BECAUSE THEY KNOW BASICALLY MORE ABOUT THE SUBJECT THAN WE AS LAY PEOPLE DO. AND IT'S PRESUMED THAT THEY MAY BE ABLE TO HELP YOU IN DECIDING SOME ISSUES UNDER THIS CASE.

OKAY. YOU MAY PROCEED.

Q. (BY MS. COMPANION, CONTINUING) YOU TESTIFIED EARLIER ABOUT ATTENDING THE SCAN MEETINGS, DIDN'T YOU?

A. YES, I DID.

Q. AND YOU FOUND THESE SCAN MEETINGS HELPFUL IN PROVIDING A MORE COMPREHENSIVE TREATMENT TO THE CLIENTS THAT YOU SERVED; ISN'T THAT TRUE?

A. I STATED THAT EARLIER, YES.

Q. YOU FELT THAT THE SCAN MEETINGS WERE A SUPPORTIVE-TYPE OF THING, SOMETHING TO HELP TO MAKE SURE THAT THESE INDIVIDUALS GOT ALL THE SERVICES THAT WOULD BE HELPFUL TO THEM?

A. YES. AND HELPFUL IN COORDINATING THE SERVICES, YES.

Q. THIS POLICY WAS NOT DESIGNED TO DISCRIMINATE AGAINST BLACKS, WAS IT?

A. I DON'T THINK SO.

MS. COMPANION: THANK YOU. NOTHING FURTHER.

REDIRECT EXAMINATION

BY MS. DUNN

Q. YOU DESCRIBED THE SCAN MEETINGS AS COORDINATING SERVICES?

A. YES.

Q. I BELIEVE THAT YOU SAID A REPRESENTATIVE WAS THERE FROM

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

**EXCERPTS FROM TESTIMONY OF MELVIN BERLINKSY**

**[BERLINSKY 600]**

WAS INITIATED BY PRESIDENT NIXON IN 1969 WHEN HE INTRODUCED THE CRIME AND SAFE STREET ACTS.

Q. ALL RIGHT, SIR. GIVE US - SPELL YOUR LAST NAME FOR THE BENEFIT OF THE JURORS, PLEASE.

A. B E L I N S K Y.

Q. WHAT IS YOUR FULL NAME?

A. MELVIN.

Q. AND WHAT HAS BEEN YOUR OCCUPATION?

A. I HAVE BEEN IN MY FAMILY BUSINESS.

Q. WHAT IS THAT?

A. THAT WAS IN MANUFACTURING.

Q. AND WHAT DO Y'ALL MAKE?

A. MEN'S TROUSERS. MANUFACTURING.

Q. KHAKI PANTS THAT WE ALL WEAR FROM TIME TO TIME?

A. THAT AND MANY OTHER THINGS.

Q. IS YOUR PLANT HERE IN CHARLESTON?

A. YES, SIR.

Q. ALL RIGHT. I PUT YOU AS A NAMED DEFENDANT ON THE STAND FOR FIVE QUESTIONS TO BE ANSWERED BY YOU AS A BOARD MEMBER AND DEFENDANT IN THIS CASE. AND AS TO THE SEQUENCE OF EVENTS THAT

LED UP TO THE APPROVAL AND IMPLEMENTATION OF THIS POLICY, WERE THEY ANY DIFFERENT FOR THIS POLICY AS OPPOSED TO WHAT YOU HAVE SEEN FOR 25 YEARS FOR OTHER POLICIES?
A. ABSOLUTELY NOT.
Q. ANY DEPARTURE FROM THE NORMAL PROCEDURE AND SEQUENCE OF

**[BERLINSKY 601]**

EVENTS IN ADMITTING AND APPROVING THIS POLICY?
A. NO, SIR.
Q. HAS THE MEDICAL UNIVERSITY, IN YOUR 25 YEARS, ALWAYS COMPLIED WITH MANDATORY REPORTING OF CHILD ABUSE?
A. AS FAR AS I KNOW IT HAS.
Q. IS THIS INTERAGENCY POLICY, WHICH IS THE SUBJECT OF THIS LAWSUIT, AND ITS CONTENTS, CONSISTENT WITH THE MEDICAL UNIVERSITY NORMS, STANDARDS AND PHILOSOPHY?
A. YES, I THINK IT IS.
Q. AND WHAT, AS YOU UNDERSTAND IT, I KNOW YOU'RE NOT A PHYSICIAN LIKE SOME OF THE OTHER MEMBERS OF THE BOARD, BUT WHAT IS IT, AS YOU UNDERSTOOD IT, IS THE GOAL OF THIS POLICY, MR. BERLINSKY?
A. WELL THE GOAL OF EVERYBODY WAS TO PROTECT THE UNBORN CHILD AND HOPEFULLY HAVE THE MOTHER GO INTO TREATMENT AND GET HER OFF OF THE DRUG COCAINE.

Q. DID THE POLICY DISCRIMINATE AGAINST BLACKS?

MR. WHERRY: OBJECTION.

THE COURT: THAT CALLS FOR A CONCLUSION. HE CAN ASK WHETHER HE INTENDED IT TO.

MR. HOOD: THAT'S FINE.

Q. (BY MR. HOOD, CONTINUING) FOR A CHANGE I'LL ACCEPT HIS QUESTION. WAS THERE AN INTENT BY THIS POLICY TO DISCRIMINATE AGAINST BLACKS?

A. ABSOLUTELY NOT.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

**EXCERPTS FROM TESTIMONY OF CAROL BING**

**[BING 653]**

Q. AND AS SOON AS YOU GET THESE QUESTIONS OVER, YOU'RE ON YOUR WAY BACK?
A. YES.
Q. THANK YOU FOR COMING. I WANT TO ASK YOU A FEW THINGS. BASICALLY WITH REGARD TO THE SEQUENCE OF EVENTS THAT LED UP TO THE APPROVAL AND IMPLEMENTATION OF THE INTERAGENCY POLICY, WAS THERE ANY DEVIATION FROM THE HOSPITAL'S NORMAL STANDARDS AND PROTOCOLS?
A. NOT AS I KNOW OF.
Q. WERE THERE ANY DEPARTURES FROM THE NORMAL PROCEDURAL SEQUENCE OF EVENTS IN THE ADOPTION OF THIS POLICY, DR. BING?
A. NOT AS I KNOW IT.
Q. HOW DO YOU SPELL YOUR LAST NAME?
A. B I N G.
Q. HAS THE MEDICAL UNIVERSITY, AS YOU SAT ON ITS BOARD AND OBSERVED, ALWAYS COMPLIED WITH MANDATORY REPORTING OF CHILD ABUSE?
A. YES.
Q. HAS THE POLICY AT THE MEDICAL UNIVERSITY, THIS

INTERAGENCY POLICY, WAS IT ADOPTED CONSISTENTLY WITH THE HOSPITAL'S NORMS, STANDARDS AND PHILOSOPHY?
A. YES.
Q. WHAT WAS THE GOAL, AS YOU UNDERSTOOD IT, AS A BOARD MEMBER, TO BE OBTAINED BY THIS POLICY?
A. THE GOAL WAS TO TRY TO HELP THE UNBORN AND RECENTLY BORN

**[BING 654]**

BABIES.
Q. DOCTOR BING, WAS THERE ANY INTENTION TO DISCRIMINATE UNDER THIS POLICY AGAINST BLACKS?
A. NO.
MR. HOOD: THANK YOU FOR COMING.
MR. WHERRY: SIDEBAR, PLEASE, YOUR HONOR.
THE COURT: YES, SIR.
(SIDEBAR.)
MR. WHERRY: HE HAD THE WITNESS SPELL HIS LAST NAME, WHICH HAPPENS TO BE IDENTICAL TO THE LAST NAME OF ONE OF OUR JURORS. AND THERE IS A RACIAL IDENTITY BETWEEN THE TWO OF THEM. I WOULD LIKE TO ASK THE WITNESS, JUST SO WE CAN BE ABUNDANTLY CLEAR SO THERE CAN BE NO INFERENCE. HE ASKED ONLY ONE OTHER TRUSTEE TO SPELL HIS NAME, AND I WOULD LIKE TO ASK THE WITNESS, SO WE CAN BE ABUNDANTLY CLEAR, HE HAS NO

RELATIONSHIP TO THE JUROR. I THINK THAT'S PROBABLY AN IMPROPER QUESTION BECAUSE HE IS IMMEDIATELY REFERRING TO SOMETHING ABOUT THE JUROR. I DON'T KNOW HOW ELSE TO HANDLE IT.

THE COURT: LET ME SAY THIS, I DON'T THINK THAT YOU SHOULD BE REQUIRED TO DO THAT IN THE PRESENCE OF THE JURY. AND I THINK THAT IF YOU DO IT, YOU COULD DAMAGE YOUR CASE WITH THE JURY, BECAUSE IT'S BASICALLY ACCUSATORY TO ASK THE QUESTION.

MR. WHERRY: YES, SIR.

THE COURT: BUT I DO THINK THAT YOU'RE ENTITLED TO

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

**EXCERPTS FROM TESTIMONY OF SHIRLEY BROWN 11/21/96**

**[SHIRLEY BROWN 4]**

A. NO, IT'S NOT.
Q. YOU ARE, HOWEVER, A REGISTERED NURSE, ARE YOU NOT?
A. YES, I AM.
Q. IN THE FALL OF '89, YOU HAD BEEN EMPLOYED BY THE MEDICAL UNIVERSITY OF SOUTH CAROLINA FOR HOW LONG?
A. I STARTED TO WORK FOR THE MEDICAL UNIVERSITY IN 1985.
Q. SO YOU HAVE BEEN THERE APPROXIMATELY FOUR YEARS?
A. I WAS AT THE COLLEGE OF NURSING FIRST AND THEN MOVED INTO THE HOSPITAL.
Q. MS. BROWN, SOMETIME IN THE LATE SUMMER OR EARLY FALL OF '89 YOU HEARD A RADIO BROADCAST, DIDN'T YOU, ABOUT A PARTICULAR POLICY TAKING PLACE IN ANOTHER LOCATION IN SOUTH CAROLINA?
A. YES, I DID.
Q. AND THAT POLICY EFFECTIVELY IN SUMMARY WAS USING THE PROSECUTORIAL PROCESS TO ADDRESS SUBSTANCE ABUSE AMONG PREGNANT WOMEN?

A. THE NEWS I HEARD IS THAT ACCORDING TO THE SOUTH CAROLINA LAW, THAT WOMEN WERE BEING ARRESTED FOR CHILD ABUSE.
Q. IN WHERE?
A. IN GREENVILLE, SOUTH CAROLINA.
Q. HAVING HEARD THAT, WHILE DRIVING INTO WORK, MS. BROWN, YOU WENT TO THE OFFICE OF MR. GOOD, WHO IS THE GENERAL COUNSEL OF THE UNIVERSITY, DIDN'T YOU?
A. NO, I DID NOT.

**[SHIRLEY BROWN 5]**

Q. YOU WROTE TO HIM? YOU CALLED HIM?
A. MR. GOOD AND I JUST HAPPENED TO BE WALKING IN TOGETHER THAT MORNING.
Q. EXCUSE ME, MY MISSTATEMENT. BUT YOU HAD THAT MORNING A CONVERSATION WITH GENERAL COUNSEL FOR THE MEDICAL UNIVERSITY OF SOUTH CAROLINA CONCERNING THAT POLICY, DIDN'T YOU?
A. YES, I DID.
Q. AS A RESULT OF THAT MEETING OR THAT CONVERSATION WITH MR. GOOD, THERE WAS EVENTUALLY, BUT NOT TOO LONG OFF, A MEETING SCHEDULED AMONG, AMONG OTHERS, THAT IS I DON'T MEAN TO BE ALL INCLUSIVE, MR. GOOD, COUNTY SOLICITOR CONDON, CHARLESTON, POLICE CHIEF RUEBEN GREENBERG AND SOME MEMBERS OF THE OBSTETRICAL STAFF, MEDICAL STAFF OF THE MEDICAL UNIVERSITY OF

SOUTH CAROLINA TO DISCUSS THIS ISSUE? FAIR?
A. THERE WAS ONLY ONE PERSON THERE FROM OB. THERE WERE MORE PEOPLE FROM NEONATOLOGY AND THE DEPARTMENT OF SOCIAL SERVICES AND THE CHARLESTON COUNTY SUBSTANCE ABUSE.
Q. AND THE OTHER PEOPLE I MENTIONED, SOLICITOR CONDON, CHIEF GREENBERG, MR. GOOD, YOURSELF?
A. RIGHT.
Q. FROM THAT MEETING - AND BY THE WAY, APPROXIMATELY WHEN WAS THAT MEETING?
A. IT OCCURRED THE MONDAY BEFORE HUGO.
Q. I APOLOGIZE TO YOU, BUT I DON'T LIVE IN SOUTH CAROLINA, YOU'LL HAVE TO REFRESH ME AS TO WHEN THAT WAS?

**[SHIRLEY BROWN 6]**

A. WHENEVER THE DATE HUGO HIT CHARLESTON.
THE COURT: HUGO HIT CHARLESTON ON SEPTEMBER THE 22ND, 1989.
Q. (BY MR. WHERRY, CONTINUING) THIS WAS THE MONDAY FOLLOWING THAT?
A. THE MONDAY BEFORE.
Q. OKAY. NOW, FROM THAT MEETING, THERE CAME AN INITIAL AGREEMENT THAT THIS GROUP WOULD GO FORWARD ON AN AD HOC BASIS TO DEVELOP SOME POLICY OR PROGRAM; IS THAT FAIR?

A. TO THE BEST OF MY RECOLLECTION, IT WOULD BE.
Q. AT THAT TIME, SEPTEMBER OF '89, IS IT TRUE AND FAIR TO SAY THAT YOUR RESPONSIBILITIES AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA WERE THAT YOU WERE RESPONSIBLE FOR THE COLLABORATION AND MANAGEMENT OF HIGH-RISK PATIENTS IN THE CLINIC AS WELL AS THE HOSPITAL AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA?
A. THAT'S CORRECT.
Q. WAS THE MEDICAL UNIVERSITY OF SOUTH CAROLINA A HIGH-RISK PREGNANCY CENTER?
A. IT'S A LEVEL 3 CENTER, WHICH IS A TERTIARY CENTER FOR HIGH-RISK OB.
Q. I'M SURE THAT YOU HAVE ANSWERED MY QUESTION. I'M SURE THAT I DID NOT UNDERSTAND THAT ANSWER. LEVEL 3 AND TERTIARY CARE CENTER, WHAT DOES THAT MEAN IN THE GREAT SCHEME OF THINGS?

**[SHIRLEY BROWN 7]**

A. HOSPITALS ARE RANKED LEVEL 1, 2 AND 3. THREE BEING THE HIGHEST LEVEL OF CARE THAT YOU CAN RECEIVE. MEDICAL UNIVERSITY IS A LEVEL 3 CENTER WHICH SERVES THE LOW COUNTRY. THE DISTRICT.
Q. AND THEREFORE IN GOOD MEDICAL PRACTICE A HIGH-RISK

PREGNANCY WHICH WAS BEING HANDLED BY SOME OTHER INSTITUTION, NOT A LEVEL 3 CENTER, WOULD REFER THAT PATIENT TO MUSC, FAIR?

A. THEY COULD.

Q. OR TO SOME OTHER LEVEL 3 HOSPITAL?

A. THAT'S CORRECT.

Q. NOW, AT THAT TIME, ALSO, YOU WERE A MEMBER, WERE YOU NOT, OF THE MATERNAL INFANT CHILD HEALTH SUBCOMMITTEE OUT OF THE GOVERNOR'S OFFICE OF THE STATE OF SOUTH CAROLINA?

A. NOT AT THE TIME OF THE INITIATION OF THIS POLICY I WAS NOT.

Q. SUBSEQUENTLY YOU WERE?

A. SUBSEQUENTLY I WAS.

Q. APPOINTED BY THE MEDICAL UNIVERSITY OF SOUTH CAROLINA?

A. THAT IS CORRECT.

Q. YOU WERE THEIR REPRESENTATIVE. FAIR?

A. THAT IS CORRECT.

Q. IN GENERAL TERMS, MS. BROWN, WOULD YOU DESCRIBE FOR THE COURT AND THE JURY, PLEASE, WHAT IT WAS DECIDED WOULD BE DONE FOLLOWING THIS INITIAL MEETING OF WHAT I WILL CALL AN AD HOC GROUP, IF YOU WOULD LIKE TO ATTACH SOME OTHER NAME TO IT

**[SHIRLEY BROWN 8]**

THAT'S FINE WITH ME, BUT AFTER THIS INITIAL MEETING THE MONDAY BEFORE HUGO, WHAT WAS DETERMINED?

A. IT WAS DETERMINED THAT WE WERE GOING TO MEET AGAIN, BUT THAT ACCORDING TO THE LAWS OF THE STATE OF SOUTH CAROLINA CHILD ABUSE AND NEGLECT, THAT CHILDREN THAT WERE BORN POSITIVE OR WOMEN THAT WERE USING DRUGS WERE TO BE REPORTED.
Q. WERE TO BE REPORTED?
A. UMM-HMM.
Q. BY WHOM?
A. BY THE MEDICAL UNIVERSITY.
Q. TO WHOM?
A. TO DSS AND THE SOLICITOR'S OFFICE AND THE POLICE.
Q. ALL RIGHT. NOW YOUR VOICE KIND OF TRAILED OFF AT THE END BUT LET ME TAKE EACH ONE OF THE THREE ONE AT A TIME.
TO DSS, DIVISION OF SOCIAL SERVICES?
A. THAT'S CORRECT.
Q. DEPARTMENT OF SOCIAL SERVICES?
A. DEPARTMENT OF SOCIAL SERVICES.
Q. AND DEPARTMENT OF SOCIAL SERVICES, WHEN A REPORT IS MADE FOR THEM, THEY INTERVENE FOR THE PROTECTION OF THE CHILD?
A. THAT IS CORRECT.
Q. OFTEN, NOT ALWAYS, OFTEN TAKING CUSTODY OF THE CHILD TEMPORARILY?
A. THAT CAN OCCUR.
Q. MAKING A FOSTER HOME PLACEMENT?

**[SHIRLEY BROWN 9]**

A. THAT CAN OCCUR.

Q. ASSESSING THE HOME?
A. YES.
Q. ASSESSING THE PATERNAL AND MATERNAL INVOLVEMENT?
A. YES.
Q. AND FITNESS?
A. I DON'T KNOW WHAT THEIR WHOLE ASSESSMENT INCLUDES, BUT THEY'RE RESPONSIBLE FOR THE WELL-BEING OF THE CHILD IN THE HOME.
Q. BUT PRIMARILY THEY'RE NOT A PROSECUTORIAL DIVISION, THEY DON'T GO THROUGH A CRIMINAL PROCESS, THEY GO THROUGH PROBATE COURT IN SOUTH CAROLINA?
A. I CAN'T TESTIFY TO THAT.
Q. OKAY. THE OTHER PLACE WHERE IT GOT REPORTED, I THINK YOU INDICATED WAS THE SOLICITOR'S OFFICE?
A. YES.
Q. SOLICITOR'S OFFICE IS THE PROSECUTOR FOR A GIVEN GEOGRAPHIC AREA IN SOUTH CAROLINA?
A. THAT IS CORRECT.
Q. A DISTRICT AREA MAY INCLUDE MORE THAN ONE COUNTY?
A. I CAN'T SPEAK TO THAT.
Q. IS THIS AREA KNOWN AS THE NINTH -
A. JUDICIAL CIRCUIT.
Q. DISTRICT.
A. YES.

**[SHIRLEY BROWN 10]**

Q. AND THAT COVERS THIS COUNTY AND ONE OTHER COUNTY?
A. BERKELEY. I THINK THAT'S THE ONLY TWO COUNTIES.

Q. NOW THE THIRD PLACE THAT YOU SAID IT WAS DETERMINED THAT YOU SHOULD REPORT IS THE POLICE?
A. THAT IS CORRECT.
Q. WHAT POLICE DEPARTMENT?
A. THAT DETERMINATION WAS MADE BY THE SOLICITOR'S OFFICE.
Q. OKAY. I BELIEVE THAT YOU SAID THAT THE OUTCOME OF THIS COMMITTEE MEETING WAS THAT WOMEN WHO TESTED POSITIVE - WAS IT JUST COCAINE, BY THE WAY?
A. IT COULD HAVE BEEN HEROIN OR ANY ILLEGAL DRUG THAT WAS KNOWN TO CAUSE HARM. THE WAY THE LAW WAS EXPLAINED TO US IS THAT ANY PERSON HAVING KNOWLEDGE OF ABUSE OR NEGLECT THAT HAS OCCURRED OR MAY OCCUR TO A CHILD WAS TO REPORT IT TO THE POLICE AND/OR DSS. AND FAILURE TO DO THAT WAS A FIVE HUNDRED DOLLAR FINE AND SIX MONTHS IMPRISONMENT FOR THE HEALTH CARE PROFESSION.
Q. SO I TAKE IT THE ANSWER TO MY QUESTION WAS: COCAINE WAS NOT THE ONLY DRUG YOU HAD THE OBLIGATION TO REPORT, IT WAS ANY ILLEGAL SUBSTANCE THAT WOULD HARM THE CHILD?
A. THAT IS CORRECT.
Q. AND WHAT - YOU INDICATED, I THINK, AND - WELL, YOU WERE EXPLAINING TO ME THE OUTCOME OF THIS COMMITTEE MEETING. YOU SAID I BELIEVE THAT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA

WAS TO REPORT IT TO DSS, SOLICITOR OR POLICE, FAIR?

**[SHIRLEY BROWN 11]**

A. RIGHT.
Q. WHAT POLICE DEPARTMENT?
A. THE POLICE DEPARTMENT THAT WAS NOTIFIED WAS BASED ON WHAT AREA THE PERSON LIVED IN.
Q. IN ORDER TO LAY A FOUNDATION FOR MY NEXT QUESTION LET ME JUST ASK A BROAD ONE. IS IT FAIR TO SAY THERE WERE VARIOUS CHANGES IN THIS POLICY OVER A PERIOD OF TIME?
A. YES, IT WAS.
Q. SO, NOW MY NEXT QUESTION, WHEN I SAY POLICY, I'M GOING TO BE REFERRING TO THE GENERAL POLICY, WITH ALL OF THE CHANGES, OKAY?
A. OKAY.
Q. AT ANYTIME DID YOU EVER, DID MUSC, TO YOUR KNOWLEDGE, EVERY REPORT ANY SUBSTANCE ABUSE BY A PREGNANT WOMEN TO ANY POLICE DEPARTMENT OTHER THAN THE CITY OF CHARLESTON?
A. YES, IT DID.
Q. WHICH POLICE DEPARTMENT?
A. NORTH CHARLESTON.
Q. ALL RIGHT. NOW, MS. BROWN, WAS THERE A - I'M SORRY. LET ME GO BACK ON THIS SUBJECT.
YOU SAID ANY DRUG THAT WOULD CAUSE HARM TO THE PREGNANT WOMAN OR THE FETUS?
A. ANY ILLEGAL DRUG.

Q. THAT WOULD INCLUDE, AND YOU CORRECT ME IF I'M WRONG AS I AM SAYING THEM: HEROIN?

**[SHIRLEY BROWN 12]**

A. THAT'S CORRECT.
Q. ANY OPIATE?
A. THAT'S CORRECT.
Q. ANY ANALOG, EITHER HEROIN OR AN OPIATE?
A. WOULD YOU - I MEAN, GIVE AN EXAMPLE.
Q. AN ANALOG IS A CHEMICALLY CREATED DESIGNER DRUG IN WHICH ONE MOLECULE IS ALTERED TO TRY TO AVOID CRIMINAL PROSECUTION?
A. YOU'RE TALKING ABOUT LIKE ICE AND SYNTHETIC?
Q. SURE.
A. THAT'S CORRECT.
Q. BARBITURATES?
A. IF IT WAS PROVEN THAT IT COULD CAUSE HARM TO THE CHILD.
Q. WERE BARBITURATES IN THE CLASS OF THINGS, MS. BROWN, THAT YOU PERCEIVED AT THAT TIME, THE FALL OF '89, TO REQUIRE REPORTING TO DSS, THE SOLICITOR OR A POLICE DEPARTMENT?
A. ANY ILLEGALLY OBTAINED DRUG WAS SUPPOSED TO BE REPORTED.
Q. ARE BARBITURATES AN ILLEGAL DRUG?
A. CAN BE IF THEY WERE OBTAINED ILLEGALLY.
Q. AND AMPHETAMINES, METHAMPHETAMINES OR ANY ANALOG THEREOF?

A. THAT'S CORRECT.
Q. WHETHER OBTAINED LEGALLY OR ILLEGALLY WHETHER IT WAS TAKEN COULD HARM THE FETUS?
A. I DIDN'T MAKE THAT DECISION.
Q. HALLUCINOGENS, PCP, ANGEL DUST, LSD?

**[SHIRLEY BROWN 13]**

THE COURT: IF YOU'RE GOING TO ANSWER THE QUESTION.
LET HER ANSWER AFTER HALLUCINOGENS.
A. IF THEY HAD TAKEN IT, IT WOULD HAVE BEEN REPORTED.
Q. DEPRESSANTS, MARIJUANA, QUALUDES, LIKE THAT?
A. MARIJUANA WAS NOT REPORTED BECAUSE THERE WAS NOT ENOUGH IN THE LITERATURE AT THAT TIME TO SHOW THAT IT CAUSED HARMFUL EFFECTS TO THE UNBORN CHILD. IF MARIJUANA ALONE WAS THE ONLY DRUG.
Q. WAS ONE OF THE CONCERNS ABOUT A MOTHER GIVING BIRTH AND RETURNING TO THE HOME IN AN ENVIRONMENT WHERE ILLEGAL DRUG USE WAS TAKING PLACE, ONE OF THE CRITERIA THAT YOU EVENTUALLY USED TO REPORT TO DSS, IS THAT ONE OF THE THINGS THAT YOU CONSIDERED?
A. I'M SORRY, COULD YOU REPEAT THAT.
Q. SURE. IT WASN'T WELL WORDED.
ONE OF THE THINGS THAT CONCERNED YOU THROUGHOUT THE COURSE OF THIS POLICY WAS SENDING THIS BABY HOME TO A CRACK-

SMOKING MOTHER IN THE HOUSE, RIGHT?
A. THE LITERATURE SAID THAT CHILDREN IN HOMES OF ABUSE AND NEGLECT WERE AT A GREATER RISK OF ABUSE AND NEGLECT WHERE DRUGS WERE BEING USED.
Q. AND MARIJUANA BEING A DRUG WAS USED IN THE HOME BUT YOU DID NOT FEEL IT NECESSARY TO REPORT MARIJUANA USE, RIGHT?
A. I DIDN'T MAKE THE POLICY.
Q. WELL YOU SAY THAT, MS. BROWN, YOU DIDN'T MAKE THE

**[SHIRLEY BROWN 14]**

POLICY. IN FACT, IT WAS YOU WHO FIRST BROUGHT IT TO THE ATTENTION OF MUSC, MR. GOOD, FAIR?
A. THAT'S CORRECT.
Q. YOU WERE AT THE FIRST COMMITTEE MEETING, FAIR?
A. THAT'S CORRECT.
Q. YOU WERE DESIGNATED BY MUSC AS THE PERSON TO WHOM ALL THE PEOPLE IN THE OBSTETRICAL DIVISION OR DEPARTMENT SHOULD NOTIFY IF THEY HAD SUSPECTED NARCOTIC ABUSE, FAIR?
A. THAT'S TRUE.
Q. YOU WERE THE PERSON WHO WOULD ORDER THE UDS, THE URINE DRUG SCREEN?
A. THAT'S NOT TRUE.
Q. YOU WERE THE PERSON WHO WOULD CONTACT DSS, THE SOLICITOR OR THE POLICE?
A. I FOLLOWED MUSC POLICY IN WHICH I WAS DIRECTED TO DO.

Q. THAT BEING TRUE, I'M SURE THE ANSWER TO MY QUESTION THEN IS, YES, YOU WERE THE ONE WHO WOULD CONTACT THE SOLICITOR, DSS OR THE POLICE?
A. IT WAS NOT ALWAYS ME. THE POLICY SAID THAT IT WAS THE OB CASE MANAGER OR DESIGNEE.
Q. WHOM - WHO OR WHOM, I DON'T KNOW WHAT IS THE CORRECT ENGLISH, DID YOU DESIGNATE AS YOUR DESIGNEE?
A. DESIGNEES WERE ANY OF THE PATIENT CARE COORDINATORS THAT WORKED FOR THE HOSPITAL. AND THAT WAS NOT DESIGNATED BY ME, IT WAS DESIGNATED BY THE CLINICAL DIRECTOR THAT I WORKED

**[SHIRLEY BROWN 15]**

WITH. WHEN ANOTHER OB CASE MANAGER CASE MANAGER WAS HIRED, SHE WAS ONE OF THE DESIGNEES. THE PERSON WHO WAS IN CHARGE OF THE CHILD ABUSE AND NEGLECT AT THE MEDICAL UNIVERSITY WAS ONE OF THE PEOPLE. SOME OF THE NURSE MANAGERS. IT WAS A GROUP OF PEOPLE WHO WERE THAT DESIGNEE.
Q. WHAT PERCENTAGE WOULD YOU HAZARD A GUESS WERE REPORTED BY YOU AS OPPOSED TO THIS WHOLE LIST OF OTHER PEOPLE MOST?
A. I'M SORRY, REPORTED TO DSS OR?
Q. OR THE SOLICITOR OR THE POLICE? MOST WERE REPORTED BY YOU?

A. I DIDN'T MAKE ANY REPORTS TO DSS, THEY WERE ALL MADE BY THE SOCIAL WORKER.
Q. YOU WERE THE PERSON WHO KEPT IN YOUR OFFICE LETTERS FROM SOLICITOR CONDON ADVISING PATIENTS THAT THEY WOULD BE ARRESTED IF THEY CONTINUED TO ABUSE SUBSTANCES, FAIR?
A. THAT'S FAIR.
Q. AND YOU WERE THE ONE WHO HANDED THOSE LETTERS OUT TO THE PATIENTS?
A. IF I WAS THE ONE ON - WORKING THAT DAY OR A DESIGNEE. IT WAS NOT ALWAYS ME.
Q. MOST OF THE TIME IT WAS YOU, FAIR?
A. I CAN'T SAY THAT.
Q. YOU WERE THE ONE WHO WAS PRESENT WHEN A LOT OF THE PLAINTIFFS IN THIS CASE WERE TAKEN INTO CUSTODY, FAIR?
A. THAT'S CORRECT.

**[SHIRLEY BROWN 16]**

MR. WHERRY: YOUR HONOR - WELL, LET ME WITHDRAW THAT.
Q. (BY MR. WHERRY, CONTINUING) DID THERE COME A POINT IN TIME IN WHICH THIS FIRST POLICY WAS REDUCED TO WRITING? TO WRITTEN FORM?
A. YES, IT DID.
Q. AND APPROXIMATELY WHEN WAS THAT?
A. THE INITIAL POLICY WAS WRITTEN AND I THINK APPROVED BY

THE EXECUTIVE COMMITTEE.
Q. NO, JUST WRITTEN?
A. WRITTEN.
Q. WE'LL GET TO THE APPROVAL LATER.
A. I THINK IT WAS LATE OCTOBER, FIRST PART OF NOVEMBER OF
Q. OF '89?
A. OF '89.
Q. OKAY. NOW WITHIN THE MEDICAL UNIVERSITY OF SOUTH CAROLINA, THEY HAVE BINDERS THAT HAVE THE HOSPITAL POLICIES IN THEM, DON'T THEY?
A. THAT IS CORRECT.
Q. AFTER TWO YEARS WORKING YOU GET FOUR SICK DAYS KIND OF THING, BUT ALL THE HOSPITAL POLICIES?
A. THAT'S CORRECT.
Q. AND IN ORDER TO BE INCLUDED IN THAT BINDER AS OFFICIAL POLICY OF THE MEDICAL UNIVERSITY OF SOUTH CAROLINA, IT HAS TO BE APPROVED BY THE HOSPITAL BODY, DOESN'T IT?

**[SHIRLEY BROWN 17]**

A. THAT IS CORRECT.
Q. NOW THIS INITIAL - THIS INITIAL DOCUMENT THAT CAME OUT SOMETIME IN OCTOBER OF '89, WAS THAT APPROVED BY WHATEVER HOSPITAL COMMITTEE HAD TO APPROVE IT TO MAKE IT OFFICIAL?
A. I WASN'T ONE WHO TOOK THE POLICY THROUGH THE COMMITTEE. AND I DON'T KNOW THE COMMITTEE DATE. I WOULD HAVE TO LOOK AT THE POLICY TO BE ABLE TO SAY THAT.

Q. SUBSEQUENTLY - I WITHDRAW THAT. I'M SORRY, I'M THINKING AHEAD OF MYSELF.
BEFORE THE APPROVAL OF THIS, IF I MAY CALL IT THE FIRST POLICY, THE FIRST DRAFT OF THE POLICY, BEFORE IT WAS APPROVED WHICH THE COMMITTEE APPROVING IT TO GO IN THE POLICY MANUAL, WERE ANY WOMEN ARRESTED AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA FOR DISTRIBUTION OF A CONTROLLED SUBSTANCE TO THEIR BORN OR UNBORN CHILDREN?
A. THERE WERE WOMEN ARRESTED BEFORE THE POLICY WAS A FORMAL POLICY.
Q. AND ONE OF THE WOMEN ARRESTED AND BEFORE THE POLICY WAS LAVERNE SINGLETON, WASN'T SHE?
A. I COULDN'T TELL YOU WHO WAS OR WAS NOT.
Q. WERE YOU THERE WHEN LAVERNE SINGLETON WAS ARRESTED? YOU HEARD HER TESTIFY HERE YESTERDAY DIDN'T YOU?
A. THAT'S CORRECT.
Q. WERE YOU THERE AS SHE SAID THAT YOU WERE?
A. I WOULD HAVE TO LOOK AT THE RECORD. I MEAN, THAT

**[SHIRLEY BROWN 18]**

OCCURRED IN 1989 AND I CAN'T REMEMBER EVERYTHING THAT I HAVE EVER DONE.
Q. IS IT YOUR TESTIMONY HERE THAT YOU DO NOT RECALL WHETHER

OR NOT YOU WERE PRESENT AT THE ARREST OF LAVERNE SINGLETON?
A. I WOULD NEED TO SEE HER RECORD AND I WOULD HAVE A NOTE IN HER RECORD STATING THAT I WAS PRESENT. I WAS NOT PRESENT FOR EVERY WOMEN THAT WAS ARRESTED. SO I CANNOT TELL YOU UNEQUIVOCALLY THAT I WAS THERE WHEN SHE WAS ARRESTED.
Q. THAT WAS NOT MY QUESTION. AND MY QUESTION WAS: IS IT YOUR TESTIMONY THAT YOU DO NOT RECALL WHETHER OR NOT YOU WERE PRESENT FOR THE ARREST OF LAVERNE SINGLETON AFTER SHE HAD HER BABY AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA?
A. I WOULD NEED TO SEE THE MEDICAL RECORD. I'M NOT GOING TO SAY I WAS PRESENT.
THE COURT: NO, THAT IS NOT THE QUESTION. THE QUESTION IS: CAN YOU RECALL WHETHER OR NOT YOU WERE THERE?
THE WITNESS: I CANNOT RECALL THAT.
THE COURT: ISN'T THAT THE QUESTION?
MR. WHERRY: EXACTLY, SIR. THANK YOU.
Q. (BY MR. WHERRY, CONTINUING) ANOTHER PATIENT THAT WAS ARRESTED BEFORE THE POLICY WAS APPROVED BY THE MEDICAL UNIVERSITY OF SOUTH CAROLINA WAS LORI GRIFFIN, WASN'T SHE?
A. THAT IS CORRECT.

Q. AND YOU HEARD HER TESTIMONY HERE YESTERDAY?
A. YES.

**[SHIRLEY BROWN 19]**

Q. YOU HEARD HER TESTIMONY ABOUT YOU BEING PRESENT WHEN SHE WAS ARRESTED?
A. THAT IS CORRECT.
Q. DO YOU RECALL WHETHER OR NOT YOU WERE PRESENT WHEN SHE WAS ARRESTED BEFORE THERE WAS ANY FORMAL POLICY AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA?
A. I DO NOT RECALL HER ARREST.
Q. I DIDN'T HEAR THE LAST WORD?
A. I DO NOT RECALL HER ARREST. I ONLY RECALL THE ARREST OF THE VERY FIRST PERSON THAT WAS EVER ARRESTED.
Q. WITH RESPECT TO LORI GRIFFIN AND LAVERNE SINGLETON, THEY WERE ARRESTED BY THE CHARLESTON POLICE?
A. IF THAT'S WHO THEY SAID THEY WERE ARRESTED BY. I CAN'T REMEMBER. I DON'T REMEMBER THEM INDIVIDUALLY.
Q. MS. BROWN, YOU HAVE BEEN INVOLVED IN THIS CASE SINCE IT BEGAN, CORRECT?
A. THAT IS CORRECT.
Q. AND IN FACT, MA'AM, YOU WERE DEPOSED FOR FIVE OR SIX DAYS, WEREN'T YOU?
A. THAT IS CORRECT.
Q. AND YOU HAVE REVIEWED EITHER IN THE COURSE OF THE

DEPOSITION OR IN CONNECTION WITH YOUR ASSISTANCE OR YOUR COOPERATION IN THE PROGRESS OF THIS CASE, VIRTUALLY EVERY MEDICAL RECORD ON EVERY PLAINTIFF AND EVERY PIECE OF PAPER IN THIS CASE, HAVEN'T YOU?

**[SHIRLEY BROWN 20]**

A. NO, SIR, I HAVEN'T.
Q. WELL CERTAINLY EVERY MEDICAL RECORD OF EVERY PLAINTIFF WAS SHOWN DURING THE COURSE OF THOSE DEPOSITIONS, WEREN'T YOU?
A. I DID, BUT SOME OF THEM WERE REVIEWED IN 1990 AND '91.
Q. MS. BROWN, IF YOU KNOW, LORI GRIFFIN OR LAVERNE SINGLETON, HOW THE POLICE CAME TO BE AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA TO TAKE THEM AWAY IN HANDCUFFS?
A. THEY WERE NOTIFIED.
Q. BY WHOM?
A. PROBABLY BY ME, BUT IF IT WAS ON THE WEEKEND IT WOULD HAVE BEEN BY THE DESIGNEE.
Q. WHEN THEY WERE NOTIFIED, BY YOU OR BY YOUR DESIGNEE, THEY WERE TOLD, WEREN'T THEY, OF, AMONG OTHER THINGS, A POSITIVE DRUG SCREEN?
A. THEY WERE TOLD OF A POSITIVE DRUG SCREEN.
Q. NOW, MS. BROWN, ALLOW ME IF YOU WILL TO DIGRESS.
PATIENTS WHO COME INTO THE MEDICAL UNIVERSITY OF SOUTH

CAROLINA ARE PROVIDED WITH A PAMPHLET, A BOOK, A LITTLE THING WHICH I'M GOING TO SHOW YOU IN A MINUTE, I PROMISE - THAT TELLS THEM WHAT THEIR RESPONSIBILITIES ARE WITH RESPECT TO THE UNIVERSITY AND WHAT THEIR RIGHTS ARE. AND IT'S PUBLISHED BY THE UNIVERSITY AND PROVIDED TO PATIENTS AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA. YOU HAVE SEEN THAT BOOK, HAVEN'T YOU?

A. I HAVE SEEN IT.

**[SHIRLEY BROWN 21]**

Q. AND IT IS TRUE, THAT BOOK WAS FOR THE PURPOSE OF DISTRIBUTION TO PATIENTS, WASN'T IT?

A. YES, IT WAS.

Q. AND IN FACT THE CONTENTS OF THAT BOOK WERE, AS FAR AS THE MEDICAL UNIVERSITY OF SOUTH CAROLINA WENT, AND YOU WENT, WERE TRUE?

A. I'M SORRY.

Q. I SPOKE TOO FAST. I DO THAT. I APOLOGIZE.

THAT BOOK AND THE CONTENTS OF IT, AS FAR AS YOU WERE CONCERNED, AND THE MEDICAL UNIVERSITY OF SOUTH CAROLINA, WERE TRUE, WEREN'T THEY? WHAT THE BOOK SAID WAS TRUE?

A. I DIDN'T HELP WRITE THAT BOOK NOR HAD I REALLY READ THAT BOOK UNTIL I WAS SHOWN IT IN MY DEPOSITION.

Q. HAVING BEEN SHOWN IT IN YOUR DEPOSITION, IT IS TRUE, ISN'T IT?
A. YES, IT IS.
Q. AND IN THERE
MR. WHERRY: JUDGE, WE'RE LOOKING FOR IT, BY THE WAY. I WILL GET IT. I THINK WE JUST FOUND IT.
Q. (BY MR. WHERRY, CONTINUING) IN THAT BOOK IT SPEAKS TO PATIENT PRIVACY, DOESN'T IT?
A. TO THE BEST OF MY RECOLLECTION IT DOES.
MR. WHERRY: YOUR HONOR, I WOULD LIKE TO HAVE MARKED AS EXHIBIT, I DON'T KNOW WHETHER IT'S PLAINTIFFS 1 OR WHETHER IT'S NUMBER 16. IT'S NOT JOINT. IT'S A PLAINTIFF'S EXHIBIT,

* * *

**[SHIRLEY BROWN 27]**

CONSEQUENCES. SHOULD YOU LEAVE THE HOSPITAL AGAINST MEDICAL ADVICE NEITHER THE HOSPITAL NOR THE PRIMARY PHYSICIAN WILL BE RESPONSIBLE FOR ANY HARM THAT ACTION MAY CAUSE YOU OR ANY OTHER PERSON."
Q. THANK YOU, MA'AM. MAY I TAKE THAT BACK, PLEASE. THANK YOU.
NOW, MS. BROWN -
THE COURT: YOU CAN MOVE THE EASEL.
MR. WHERRY: YES, I WILL.

Q. (BY MR. WHERRY, CONTINUING) MS. BROWN, WHAT YOU HAVE JUST READ, PART OF 105, 105 IS, MS. BROWN, AN APPROVED DOCUMENT BY THE MEDICAL UNIVERSITY OF SOUTH CAROLINA, APPROVED BY WHATEVER COMMITTEE HAD TO APPROVE IT, FAIR?
A. THAT'S CORRECT.
Q. NOW LET'S GO BACK TO WHAT WE TALKED ABOUT AT LEAST WITH RESPECT TO THE PLAINTIFFS LORI GRIFFIN AND LAVERNE SINGLETON. WOULD YOU AGREE WITH ME THAT A DRUG SCREEN OR RESULTS OF LABORATORY ANALYSIS OF ONES' URINE IS MEDICAL INFORMATION?
A. YES, IT IS.
Q. AND IF IN FACT YOU RELAYED THAT INFORMATION ON TO ANYONE IT WOULD HAVE BEEN BECAUSE YOU GOT THE RESULTS OF THE LAB TESTS FROM THE MEDICAL UNIVERSITY OF SOUTH CAROLINA?
A. THAT IS CORRECT.
Q. OKAY. NOW, LET'S GO FORWARD - I'M SORRY.
MR. WHERRY: YOUR HONOR, I WOULD LIKE TO SHOW THE

**[SHIRLEY BROWN 28]**

WITNESS WHAT HAS BEEN MARKED AS EXHIBIT 106. PLAINTIFF'S 106 FOR TRIAL FOR IDENTIFICATION ONLY. I'M SHOWING MY ADVERSARY.
(PAUSE IN PROCEEDINGS.)
MR. HOOD: YOUR HONOR, AS TO THIS EXHIBIT WE HAVE AN

OBJECTION TO ITS RELEVANCY.

THE COURT: LET ME SEE IT.

MR. WHERRY: I'M NOT OFFERING IT YET.

THE COURT: IF YOU'RE NOT OFFERING IT.

MR. WHERRY: NO, SIR, I'M NOT. I WANT TO SHOW IT TO THE WITNESS TO SEE IF SHE CAN MAKE IT RELEVANT.

Q. (BY MR. WHERRY, CONTINUING) MS. BROWN, YOU REFERRED TO EARLIER IN YOUR TESTIMONY A WRITING OF FIRST DRAFT OF A POLICY.

MS. BROWN, LET ME WITHDRAW THAT QUESTION AND I'LL LEAVE THE DOCUMENT THERE WITH YOU FOR A MOMENT. IT'S NOT WHAT I THOUGHT IT WAS.

DID THERE COME A POINT IN TIME, MS. BROWN, AT WHICH - AT WHICH YOU ATTENDED OR PARTICIPATED IN ANOTHER MEETING, A FURTHER DEVELOPMENT OF WHAT I WILL CALL THE INTERAGENCY POLICY?

A. YES IT WAS.

Q. WITH RESPECT TO THE ONE THAT WAS ADOPTED IN OCTOBER OF '89, WERE THERE A LIST OF CRITERIA THAT WOULD LEAD TO THE HOSPITAL OBTAINING A UDS, URINE DRUG SCREEN?

A. YES, IT WAS.

**[SHIRLEY BROWN 29]**

Q. AND WOULD YOU TELL THE JURY, PLEASE, WHAT THOSE CRITERIA

WERE THAT WOULD LEAD TO THE HOSPITAL RUNNING A UDS, A URINE DRUG SCREEN?

A. A PERSON HAD NO PRENATAL CARE.

Q. NO PRENATAL CARE?

A. CORRECT. IF THEY HAD LATE PRENATAL CARE, THAT WOULD BE AFTER 24 WEEKS GESTATION.

Q. LATE PRENATAL CARE?

A. IF THEY HAD INCOMPLETE PRENATAL CARE, I.E., THEY CAME IN ONE VISIT AND THEN DIDN'T COME BACK UNTIL JUST BEFORE THEY DELIVERED.

Q. INCOMPLETE PRENATAL CARE.

A. IF THEY CAME IN WITH AN ABRUPTO PLACENTA, THAT IS WHENEVER THE PLACENTA SEPARATES FROM THE INSIDE OF THE UTERUS WHICH CAN CAUSE THE BABY TO DIE AND OR PUT THE MOTHER'S HEALTH IN SERIOUS JEOPARDY.

IF SHE CAME IN AND HER BABY HAD DIED INSIDE OF HER KNOWN AS INTRAUTERINE FETAL DEATH.

Q. MS. BROWN, I PROMISE YOU I'M GOING TO LET YOU CONTINUE WITH THAT. WITH THE INTRAUTERINE FETAL DEATH THAT WOULD TRIGGER A UDS?

A. YES, IT WOULD.

Q. IF THEIR THERE WAS INTRAUTERINE FETAL DEATH, THE HOSPITAL, I TAKE IT THE HEALTH CARE PROFESSIONALS HAD NO FURTHER INTEREST IN PROTECTION OF THE FETUS, DID THEY? THE

BABY'S DEAD, THEY HAD NOTHING LEFT TO PROTECT, RIGHT?
A. BUT OUR URINE DRUG SCREENS WERE DONE TO LOOK FOR REASONS.
Q. I UNDERSTAND. CONTINUE WITH YOUR LIST AND THEN LET US RETURN TO THAT.
A. IF THEY WERE IN PRETERM LABOR.
Q. PRETERM LABOR.
A. IF - AND OF NO OBVIOUS CAUSE. IF A LADY HAD TWINS, TRIPLETS, A LONG HISTORY OF CERVICAL INCOMPETENCE OR SOMETHING LIKE THAT, SHE MIGHT NOT BE SCREENED.
INTRAUTERINE GROWTH RETARDATION. THAT'S WHEN THE BABY IS NOT THE SIZE THAT IT SHOULD BE AND THERE WAS NO OBVIOUS CAUSE FOR THAT.
AND UNEXPLAINED CONGENITAL ANOMALIES.
Q. WHICH I TAKE IT MEANS A BIRTH DEFECT?
A. A BIRTH DEFECT.
Q. OKAY. NOW, MS. BROWN, LET'S GO BACK TO THAT INTRAUTERINE FETAL DEATH. AND IN CONJUNCTION WITH THAT THE INTENT OF THE POLICY, THE REASON THAT WE DECIDED ON THIS POLICY, AT THE FIRST MEETING, WAS BECAUSE OF OUR CONCERN, AND AS MR. HOOD SAID IN HIS OPENING, FOR THE HEALTH AND SAFETY AND CARE OF THESE FETUSES AND SOON TO BE CHILDREN; FAIR?
A. THAT IS CORRECT.

Q. SO, HOW DID A TAKING A URINE SAMPLE FROM THE MOTHER OF A CHILD WHO WAS ALREADY DEAD, HOW DID THAT PROTECT UNBORN CHILDREN? IT DIDN'T, DID IT?

**[SHIRLEY BROWN 31]**

A. IT DIDN'T.
Q. WHEN WE GOT A POSITIVE URINE SCREEN ON THE UNFORTUNATE WOMEN WHO EXPERIENCED THE INTRAUTERINE DEATH, THAT LIKEWISE WAS TURNED OVER TO THE POLICE FOR HER TO BE ARRESTED, WASN'T IT?
A. NO, IT WASN'T.
Q. WHAT WAS DONE WITH IT? WHY DID YOU TAKE IT?
A. UNDER THE SOUTH CAROLINA LAW AS EXPLAINED TO ME BY THE LEGAL COUNSEL AT THE MEDICAL UNIVERSITY, THAT WAS A WRONGFUL DEATH AND HAD TO BE REPORTED TO THE MEDICAL EXAMINER. SO THE MEDICAL EXAMINER.
Q. I'M SURE, MS. BROWN, EVERYTHING THAT YOU JUST TOLD ME IS TRUE. WHAT DOES THAT HAVE TO DO WITH YOUR REPORTING OF THE INTRAUTERINE FETAL DEATH TO THE MEDICAL EXAMINER FOR HER EXAMINATION OF THE CAUSE OF DEATH, WHAT DOES THAT HAVE TO DO WITH YOU TAKING A URINE SCREEN OF THE UNFORTUNATE MOTHER? NOTHING, DOES IT, MA'AM?
A. IT WAS THE POLICY.

Q. MS. BROWN, I UNDERSTAND THAT IT WAS THE POLICY. IT HAS NOTHING TO DO WITH FETAL PROTECTION, DOES IT?
A. NO, IT DOESN'T.
Q. THANK YOU. NOW -
MR. WHERRY: IF THE COURT WILL BEAR WITH ME FOR JUST A MOMENT.
Q. (BY MR. WHERRY, CONTINUING) WHILE MR. HOOD IS LOOKING AT

**[BROWN 32]**

IT, I'M GOING TO IN A MOMENT SHOW YOU A COPY OF PLAINTIFF'S EXHIBIT NUMBER 25 FOR TRIAL FOR IDENTIFICATION. AND ASK YOU WHETHER IT IS, AND I WON'T KNOW THE ANSWER, WHETHER IT IS A COPY OF WHATEVER DOCUMENT CAME OUT OF THIS FIRST MEETING. DO YOU UNDERSTAND MY QUESTION?
A. I SURE DO.
MR. HOOD: WE HAVE NO OBJECTION. I THINK THERE ARE BETTER QUALITY POLICIES THAN THIS ONE.
MR. WHERRY: I WOULD WELCOME IT.
THE COURT: OKAY. LET'S PROCEED.
MR. WHERRY: IF THERE IS NO OBJECTION, WOULD YOU MARK THAT IN EVIDENCE, PLEASE.
THE COURT: PLAINTIFF'S EXHIBIT NUMBER 25 IN EVIDENCE.
MR. WHERRY: THANK YOU.
Q. (BY MR. WHERRY, CONTINUING) MS. BROWN, AND I DO

APOLOGIZE FOR THE COPY, IS THIS THE DOCUMENT THAT WAS GENERATED BY THAT FIRST AD HOC MEETING IN SEPTEMBER OF '89?

A. THERE WERE - FROM THAT FIRST MEETING IN SEPTEMBER THERE WERE LIKE SOME GENERAL NOTES. IT WAS NOT A FORMALIZED POLICY WRITTEN UP LIKE THIS AT THAT POINT IN TIME.

Q. SO THE ANSWER IS NO, THIS IS NOT WHAT CAME OUT OF THAT?

A. RIGHT.

Q. OKAY. CAN I HAVE IT BACK, PLEASE. THANK YOU.

IN THAT FIRST POLICY - LET ME - I SAY THAT IT

**[BROWN 33]**

WASN'T A FORMALIZED DOCUMENT LIKE THIS, SOMETHING RATHER FORMAL HAD TO GO TO WHATEVER COMMITTEE IT GOES TO TO BE MADE PART OF THE POLICY MANUAL, FAIR?

A. THAT'S RIGHT.

Q. IS THAT WHAT I JUST SHOWED YOU OR IS THERE SOMETHING ELSE? HOW CAN YOU KNOW WHAT I'M SHOWING YOU WITHOUT ME SHOWING YOU. SHOWING YOU P-25, IS THAT WHAT WENT TO THAT COMMITTEE OR DID SOMETHING ELSE GO?

A. THERE WAS A MEETING IN SEPTEMBER. YOU ASKED IF THIS WAS A DOCUMENT THAT CAME FROM THE MEETING IN SEPTEMBER. AND I SAID, NO, IT WASN'T. YOU KNOW, THERE WERE SUBSEQUENT MEETINGS

AND AFTER A NUMBER OF MEETINGS, THIS WAS DEVELOPED.
Q. OKAY. THAT'S FAIR. AND I WILL GET TO THAT. WHAT WENT TO THE COMMITTEE THAT APPROVED THIS FIRST POLICY IN SEPTEMBER OF '89? I THINK YOU SAID THAT WAS APPROVED TO BECOME PART OF THE MEDICAL UNIVERSITY POLICY IN OCTOBER. WAS THERE A DOCUMENT THAT WAS APPROVED OR DID SOMEBODY JUST GO AND TALK TO THEM?
A. TOWARD THE END OF OCTOBER OR NOVEMBER, BECAUSE I TOLD YOU I DIDN'T TAKE THE POLICY TO THE COMMITTEE, SO I DON'T KNOW EXACTLY WHEN IT WENT, IT WAS A POLICY THAT, TO THE BEST OF MY KNOWLEDGE, LOOKED VERY MUCH LIKE THIS. BUT I DID NOT WRITE THE FINAL COPY NOR DID I TAKE IT TO THE COMMITTEE. SO -
Q. IS WHAT YOU HAVE THERE, P-25, IS THAT REFLECTIVE OF THE FIRST POLICY, THE FIRST THING THAT THE - THE FIRST THING THAT

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**[SHIRLEY BROWN 35]**

THE COURT: LET'S MAKE IT VERY CLEAR SO THE JURY CAN UNDERSTAND.
MR. WHERRY: YOU'RE ABSOLUTELY CORRECT.
Q. (BY MR. WHERRY, CONTINUING) IS WHAT YOU'RE HOLDING IN

YOUR HAND APPROXIMATELY WHAT WAS ADOPTED FORMALLY IN OCTOBER OR IN NOVEMBER OF '89 BY THE HOSPITAL?
A. SOMETIME LATE OCTOBER OR MIDDLE OF NOVEMBER.
Q. YEAH.
A. THIS APPEARS TO BE THE DOCUMENT.
Q. GOOD. THANK YOU.
THE COURT: AND THAT'S EXHIBIT 25?
MR. WHERRY: YES, SIR, EXHIBIT 25.
Q. (BY MR. WHERRY, CONTINUING) PRIOR TO THAT, WAS THE POLICY THAT IS CONTAINED IN PLAINTIFF'S 25 BEING APPLIED WHETHER OR NOT IT HAD BEEN ADOPTED? WAS IT BEING USED ON AN INFORMAL BASIS BETWEEN SEPTEMBER AND MID-NOVEMBER?
A. BUT NOT IN ITS FULLEST EXTENT BECAUSE ALL OF THE LETTERS AND VIDEOTAPES, ET CETERA, WERE NOT AVAILABLE AT THAT TIME.
Q. WAS THERE IN - PRIOR TO OCTOBER 12 OF '89, WAS THERE INTERACTION BETWEEN MUSC, THE OBSTETRICS DEPARTMENT, THE HIGH-RISK PREGNANCY PEOPLE AND THE CITY OF CHARLESTON POLICE DEPARTMENT, PARTICULARLY CAPTAIN ROBERTS?
A. THERE WAS A MEETING HELD SOMETIME IN OCTOBER.
Q. AND FROM THAT MEETING A DOCUMENT WAS GENERATED WHICH WAS MARKED JOINT EXHIBIT NUMBER 1, A DOCUMENT WAS GENERATED BY

**[SHIRLEY BROWN 36]**

CAPTAIN ROBERTS, WHICH WAS COPIED TO YOU, THAT SET FORTH IN WRITING THE, QUOTE, "POLICY OF THE CHARLESTON POLICE DEPARTMENT FOR ARRESTING WOMEN REFERRED TO THEM OR COMPLAINED OF TO THEM BY MUSC"?

A. THAT IS CORRECT.

Q. AND THAT JOINT EXHIBIT NUMBER 1 FROM CAPTAIN ROBERTS, A COPY TO YOU, IS WHAT THE CHARLESTON POLICE DEPARTMENT PROGRAM OF COMPLIANCE WAS?

A. TO THE BEST OF MY KNOWLEDGE, IT WAS.

Q. LET ME JUMP MUCH AHEAD.

A. OKAY.

Q. YOU DID RECEIVE, DIDN'T YOU, MS. BROWN, A COPY OF A LETTER FROM THE CHARLESTON POLICE DEPARTMENT INDICATING THAT THEY WISHED THAT SOMEBODY WOULD GET SEARCH WARRANTS FOR THE MEDICAL RECORDS OF THESE PEOPLE BEFORE THEY USED THEM TO ARREST AND PROSECUTE THEM?

A. I PERSONALLY RECEIVED THE LETTER?

Q. YES, YOU PERSONALLY RECEIVED IT. DO YOU REMEMBER THAT?

A. I DON'T REMEMBER THAT.

Q. OKAY. WHEN WAS THE FIRST REVISION OF THIS FIRST POLICY? WHEN DID WE FIRST CHANGE IT? OR ITS IMPLEMENTATION. I MEAN NOT ONLY THE POLICY BUT HOW IT WORKED?

A. IN JANUARY OF '90.
Q. IN JANUARY OF '90 WHO MET TO CAUSE THE CHANGE? DID I WORD THAT WELL? DO YOU UNDERSTAND MY QUESTION?

**[SHIRLEY BROWN 37]**

A. YOU'RE ASKING WHO WAS AT THE MEETING THAT CHANGED THE POLICY?
Q. YEAH. BUT LET ME CHANGE IT BECAUSE I DON'T THINK IT WAS WORDED WELL.
HOW COME THE POLICY CHANGED? HOW DID IT GET CHANGED?
A. IT WAS DECIDED INITIALLY THAT, YOU KNOW, IT WOULD BE REVIEWED. AND IN JANUARY THE DEPARTMENT OF SOCIAL SERVICES AND THE SOLICITOR'S OFFICE AND REPRESENTATIVES FROM THE MEDICAL UNIVERSITY, AND I DON'T REMEMBER WHO ELSE WAS THERE, I DON'T REMEMBER IF CAPTAIN ROBERTS OR ANYONE WAS THERE, MET, AND THE PEOPLE FROM CHARLESTON COUNTY SUBSTANCE ABUSE.
Q. AND THE RESULT OF THAT MEETING. CAUSED SOME CHANGES IN THE POLICY, RIGHT?
A. THAT IS CORRECT.
Q. I'M SORRY, MS. BROWN, I'M SURE THAT YOU TOLD ME WHEN THIS WAS THAT HAPPENED. JANUARY OF '90?
A. THE BEST OF MY RECOLLECTION IT WAS AROUND JANUARY OF

1990. I DON'T REMEMBER THE EXACT DATE.
Q. LET ME SHOW YOU - YOU WILL NOTICE A LOOSE-LEAF RIGHT IN FRONT OF YOU, MS. BROWN. WOULD YOU TURN THAT TO JOINT EXHIBIT NUMBER 3. I THINK THERE ARE TABS ON IT. AND LOOKING AT THAT, MS. BROWN, IS THAT MINUTES, IF YOU WILL, OR A SUMMARY OF THAT MEETING IN JANUARY OF '90 IN WHICH THERE WERE DEVELOPED REVISIONS TO THE POLICY?

**[SHIRLEY BROWN 38]**

A. YES, IT IS.
Q. NOW, WOULD YOU DESCRIBE FOR THE JURY, PLEASE -
WELL, FIRST OF ALL, WHEN WERE THE REVISIONS TO THE POLICY IMPLEMENTED? IT WASN'T UNTIL MARCH OF '90, WAS IT?
A. I DON'T RECALL THE EXACT DATE. I DON'T THINK THE WRITTEN POLICY CAME OUT UNTIL MARCH OF '90, BUT IF I REMEMBER CORRECTLY WE BASICALLY STARTED FOLLOWING THIS GUIDELINE AS SOON AS PEOPLE MET AND AGREED UPON IT.
Q. OKAY. WHAT WERE THE DIFFERENCES BETWEEN THE ONE MARKED P-25, POLICY ONE, AND JOINT NUMBER 3, WHICH I TAKE IT IS THE FIRST REVISION THERE FOR POLICY NUMBER 2? WHAT WERE THE DIFFERENCES?
A. THE FIRST POLICY IF A WOMAN WAS PREGNANT AND TESTED

POSITIVE SHE RECEIVED THE EDUCATIONAL BENEFITS AND WAS REFERRED TO SUBSTANCE ABUSE. IF SHE CAME IN AND DELIVERED A BABY THAT WAS POSITIVE, THE POLICY WAS LIKE GREENVILLE'S POLICY WHERE THE PERSON WAS ARRESTED AT DELIVERY. AS THE POLICY EVOLVED, WE WANTED TO INCREASE THE EDUCATIONAL EFFORTS TO ALL PREGNANT WOMEN, SO WE GOT VIDEOS ON THE HARMFUL EFFECTS OF SMOKING, DRINKING AND DRUGS. AND THESE WERE SHOWN TO ALL WOMEN COMING TO MUSC FOR CARE. EVERYONE RECEIVING THE PRENATAL CARE WAS GIVEN A LETTER ON THE HARMFUL EFFECTS AND OUTLINING, YOU KNOW, THAT WE WANTED TO PROTECT THEM AND THEIR UNBORN CHILD. AND THAT WE - IF THEY WERE USING DRUGS, TO PLEASE LET US KNOW AND THAT WE WOULD REFER THEM TO TREATMENT.

**[SHIRLEY BROWN 39]**

BUT IF THEY CONTINUED TO USE DRUGS AND DIDN'T USE - AND DIDN'T GET TREATMENT, THAT, YOU KNOW, WE WOULD HAVE TO PROTECT THEIR CHILD AND A REPORT WOULD BE MADE TO THE POLICE.

IN JANUARY, FEBRUARY, RIGHT AFTER THAT INITIAL MEETING, IT WAS DECIDED THAT WOMEN WHO CAME IN WITHOUT - AND THE FIRST TIME THAT THEY EVER TESTED POSITIVE FOR COCAINE WAS

AT DELIVERY, THAT THEY WOULD BE ENTERED INTO SUBSTANCE ABUSE TREATMENT AND AN AMNESTY-TYPE PROGRAM TO TRY TO HELP THEM GET OFF OF THE DRUGS.

MR. WHERRY: YOUR HONOR, AT THIS POINT I INTEND TO ASK A SERIES OF ABOUT FOUR QUESTIONS THAT I AM CERTAIN WILL BE CHALLENGED AND THAT THERE WILL BE A REQUIREMENT THAT I SHOW A GOOD FAITH BASIS FOR ANSWERING.

THE COURT: WELL IT'S 11:30 AND I NORMALLY WOULD TAKE A BREAK AT THIS TIME AND LET'S GO AHEAD AND TAKE ONE AND WE'LL MAKE IT ABOUT 20 MINUTES AND THAT WAY WE CAN DISCUSS THIS EVIDENCE WHILE YOU'RE GONE. LET'S TAKE ABOUT 20 MINUTES.

(RECORD SEALED BY ORDER OF COURT).

THE COURT: ALL RIGHT, SIR.

MR. WHERRY: THANK YOU.

Q. (BY MR. WHERRY, CONTINUING) ALL RIGHT, MS. BROWN, I THINK WE HAVE THE FIRST TWO VERSIONS OF THE POLICY THAT WE HAVE IDENTIFIED. DID THERE COME A TIME WHEN THERE WAS YET ANOTHER VERSION OF THE POLICY OR ANOTHER ARTICULATION OF IT?

**[SHIRLEY BROWN 40]**

A. A POLICY IS PUT IN A MANUAL FOR THE GENERAL GUIDELINES.

THEN THERE ARE - YOU CAN HAVE, JUST LIKE IF IT WAS A POLICY RELATED TO A MEDICAL CONDITION, YOU CAN HAVE LIKE A TEXTBOOK OF GUIDELINES OR STEPS 1, 2, 3 TO FOLLOW. THIS POLICY HAD LIKE A GUIDELINE STEP 1, 2, 3 THAT WAS FOLLOWED.

Q. BUT MY QUESTION IS: WAS THERE YET ANOTHER VERSION OF - A THIRD VERSION OF THE POLICY?

A. NOTHING EXCEPT THE WAY THE GUIDELINES KIND OF CHANGED, SOME OF THE WORDING.

Q. AND WERE CHANGES IN GUIDELINES APPROVED BY THE MUSC COMMITTEE THAT APPROVES POLICIES?

A. THEY WENT THROUGH THE LEGAL OFFICE AT THE MEDICAL UNIVERSITY.

Q. NOW, WHAT WERE THE CHANGES THEN THAT OCCURRED AFTER MARCH OF 1990 IN THE GUIDELINES?

A. THE GUIDELINES WERE REALLY JUST A CLEAR WRITE-UP OF WHAT OCCURRED IN JANUARY OF '90. AND IT WENT THROUGH ALL OF THE STEPS ABOUT NOTIFYING, WHEN TO NOTIFY AND WHAT TO DO.

Q. WHAT ARE THOSE GUIDELINES AS THEY EXISTED? WHEN DID THE GUIDELINES FIRST COME INTO BEING? WHEN IS THE FIRST SET OF GUIDELINES?

A. SOMETIME BETWEEN JANUARY OF '90 AND MARCH OF '90.

Q. AND DOES EITHER PLAINTIFF'S EXHIBIT 25 - WELL, DOES

PLAINTIFF'S 25 SET FORTH WHAT THOSE GUIDELINES WERE BETWEEN JANUARY AND MARCH OF 1990?

**[SHIRLEY BROWN 41]**

A. WHERE IT SAYS ON HERE ABOUT PROTOCOL AFTER IDENTIFICATION OF DRUG ABUSE FOR PATIENT WHO IS DELIVERING AN INFANT, IT MIRRORS THE FIRST POLICY OF WHERE, YOU KNOW, IF THEY HAVEN'T SEEN THE VIDEO, THEY WOULD SEE THE VIDEO. THAT THEY WOULD BE GIVEN AND APPOINTMENT FOR SUBSTANCE ABUSE. THAT DSS WOULD BE NOTIFIED. ALL OF THE EDUCATIONAL EFFORTS THAT WERE PUT INTO PLACE, AS WELL AS A LETTER FROM THE NEONATOLOGIST WOULD BE GIVEN EXPLAINING SOME OF THE THINGS THAT COULD HAPPEN TO THE BABY AFTER THEY GOT HOME AND SOME OF THE INTERVENTIONS THAT THEY COULD USE IN CARING FOR THE BABY.

Q. IS WHAT YOU HAVE JUST SAID THINGS THAT THE LATER GUIDELINES CONTAINED, THAT NUMBER 25, P-25 DOES NOT CONTAIN?

A. THAT IS CORRECT.

Q. OKAY. SO WHAT YOU HAVE JUST TOLD US ARE THINGS THAT WOULD MODIFY P-25 TO FORM THE POLICY AND THIS IMPLEMENTATION AS IT EXISTED AFTER MARCH OF '90, FAIR?

A. THAT IS CORRECT.

Q. AND IS THAT REDUCED TO WRITING ANYPLACE?

A. YES, IT IS.

Q. AND WHERE, MA'AM, IS THAT REDUCED TO WRITING?
A. IT WAS IN LIKE THE NURSING BOOKS THAT ARE KEPT ON THE UNITS THAT OUTLINE, STEPS OF WHAT IS TO BE DONE.
Q. WOULD YOU LOOK IN THE BOOK YOU HAVE IN FRONT OF YOU AND SEE WHETHER YOU HAVE JOINT EXHIBIT NUMBER 4 IN THERE. IT MAY HAVE BEEN TAKEN OUT BY ACCIDENT. I'M NOT SUGGESTING THAT YOU

**[SHIRLEY BROWN 42]**

HAVE IT.
A. IT'S - NUMBER 4 IS IN HERE.
Q. OKAY. AND IS NUMBER 4 A REFLECTION OF THE GUIDELINES AS THEY CAME TO BE AFTER MARCH OF 1990 OR IN MARCH OF 1990?
A. THAT IS CORRECT.
Q. NOW, IS THIS THE VERSION OF THE GUIDELINES THAT CONTINUED THROUGH THE END OF '90 AND INTO '91?
A. YES, IT IS.
Q. AND THERE WERE NO SUBSTANTIAL CHANGES THEN IN THE GUIDELINES FOR A PERIOD OF A YEAR OR MORE, FAIR?
A. THAT'S CORRECT.
Q. AND IF YOU WILL, LET'S TALK ABOUT THESE GUIDELINES TOGETHER. THE WAY THAT WE WOULD IDENTIFY WOMEN FOR UDS, FOR URINE DRUG SCREENS NOW HAS NINE, DOESN'T IT, INDICATORS, FOR LACK OF A BETTER WORD?
A. THAT IS CORRECT.

Q. AND ONE OF THEM ONLY HAS SIX, THERE IS NO PRENATAL CARE, FAIR?
A. THAT IS CORRECT.
Q. LATE PRENATAL CARE?
A. THAT IS CORRECT.
Q. AND INCOMPLETE PRENATAL CARE?
A. THAT IS CORRECT.
Q. ABRUPTIO PLACENTAE, IF I'M SAYING THAT CORRECTLY?
A. THAT IS CORRECT.

**[SHIRLEY BROWN 43]**

Q. INTRAUTERINE FETAL DEATH?
A. THAT'S CORRECT.
Q. THE INTRAUTERINE FETAL DEATH, WAS IT EVER DISCUSSED AT ANY OF THESE COMMITTEES THAT IT HAD NOTHING TO DO WITH FETAL PROTECTION?
A. PART OF THE POLICY WAS –
Q. NO, MA'AM. WAS IT EVER DISCUSSED THAT HAD NOTHING TO DO WITH FETAL PROTECTION?
A. NO, IT DIDN'T.
Q. PRETERM LABOR IF NO OBVIOUS CAUSE?
A. THAT IS CORRECT.
Q. WHAT IS IUGR?
A. IT MEANS THAT THE GROWTH OF THE BABY IS NOT WHAT IT SHOULD BE AT THAT POINT IN HER PREGNANCY.
Q. AND NUMBER 9 IS UNEXPLAINED CONGENITAL ANOMALIES, RIGHT?
A. THAT'S CORRECT.
MR. WHERRY: BEAR WITH ME FOR JUST A MOMENT, YOUR

HONOR.

THE COURT: CERTAINLY.

Q. (BY MR. WHERRY, CONTINUING) IT ALSO ADDED A CLASS OF INDICATORS THAT CAME FROM SCREENING THE INFANT THAT WAS BORN, RIGHT?

A. THAT IS CORRECT.

Q. AND I WILL GO OVER THOSE. BY THE WAY, IT SEEMS TO ME AT THIS POINT IN TIME WE'RE ONLY CONCERNED WITH WOMEN POST-24

**[SHIRLEY BROWN 44]**

WEEKS OF PREGNANCY? 24 WEEKS OF PREGNANCY OR LATER; IS THAT RIGHT?

A. ALL WOMEN WERE SCREENED NO MATTER WHAT GESTATIONAL AGE THEY WERE.

Q. WELL, WASN'T THERE AND UNDERSTANDING THAT THE POLICY WOULD NOT BE IMPLEMENTED, AT LEAST THE PUNITIVE PARTS OF IT, TO ANY WOMEN WHO WERE LESS DEVELOPED, FOR LACK OF A BETTER WORD, THAN 24 WEEKS?

A. AS IT WAS EXPLAINED TO ME, IT WAS THE - DEFINED BY THE STATE THAT AT 25 WEEKS THAT A CHILD THAT AND UNBORN CHILD WAS A PERSON.

Q. WELL, YEAH. MY QUESTION OF COURSE WAS: NOT WHY OR NOT THE MEANS THAT YOU HAD, BUT THAT THE POLICY WAS NOT APPLIED OR IMPLEMENTED WITH PREGNANT WOMEN WHO WERE LESS THAN 25 WEEKS

PREGNANT, FAIR?
A. YOU MEAN NOT ARRESTED?
Q. YEAH, NOT ARRESTED, GIVEN SOLICITOR'S LETTERS OR ANY OF THOSE THINGS?
A. THEY WERE GIVEN SOLICITOR'S LETTERS BEFOREHAND.
Q. IS IT YOUR POSITION THAT NO WOMEN WERE ARRESTED UNDER THE INTERAGENCY POLICY WHO WERE LESS THAN 25 WEEKS PREGNANT?
A. TO THE BEST OF MY KNOWLEDGE EVERYONE WAS OVER 25 WEEKS PREGNANT IF THEY WERE ARRESTED.
Q. THE THREAT OF ARREST, THE GIVING OF THE SOLICITOR'S LETTER, YOU WOULD THREATEN TO ARREST THEM IF THEY DIDN'T GO TO

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**[SHIRLEY BROWN 49]**

THE COURT: THAT'S THE LETTER THAT I WAS TALKING ABOUT. IS THAT LETTER IN EVIDENCE?
MR. WHERRY: THAT'S IN THE BOOK ALSO. THAT'S 10.
THE WITNESS: I CAN LOOK.
THE COURT: LOOK AT IT. I WANT TO BE SURE THAT I UNDERSTAND WHAT YOU'RE SAYING.
THE WITNESS: THAT'S NUMBER 10.
THE COURT: OKAY.
MR. WHERRY: YOUR HONOR, I WOULD ASK THAT ALL OF HER ANSWERS THAT PURPORTED TO BE AN EXPLANATION BE STRICKEN AS BEING NOT RESPONSIVE.

THE COURT: GO AHEAD.
MR. WHERRY: MY QUESTION ASKED DIDN'T YOU THINK - REQUIRED A YES OR NO.
THE COURT: I'LL PERMIT IT. GO AHEAD.
Q. (BY MR. WHERRY, CONTINUING) WHEN POLICY NUMBER 1, POLICY NUMBER 2, THE MODIFICATION OF THE GUIDELINES WERE ADOPTED, IT WAS ALWAYS THE INTENTION OF YOU AND THE PEOPLE AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA, AND IN FACT FROM WHAT YOU LEARNED AT THESE MEETINGS, CHARLESTON POLICE DEPARTMENT, MR. CONDON THE SOLICITOR, TO HELP THE WOMEN GET TREATMENT, NOT TO ARREST THEM, NOT TO PROSECUTE THEM, NOT TO CAUSE THEM TO GO TO JAIL, FAIR?
A. THAT'S CORRECT.
Q. NOW, IF YOU WILL LOOK IN THAT BOOK, JOINT EXHIBIT NUMBER

**[SHIRLEY BROWN 50]**

6, THERE IS A LETTER SIGNED BY MR. CONDON HANDED OUT BY YOU, RIGHT?
A. NUMBER 6? THAT IS CORRECT.
Q. AND THAT IS WHAT IS KNOWN AS THE SOLICITOR LETTER, ISN'T IT?
A. THAT IS CORRECT.
Q. NOW, FOR THE JURY, WOULD YOU READ THE ENTIRE DOCUMENT TO THE JURY SO THAT THEY KNOW WHAT - WAS THIS LETTER GIVEN TO

ALL PATIENTS BEFORE THEY WERE CRIMINALLY CHARGED?
A. THIS LETTER WAS ONE OF TWO LETTERS AND THIS WAS ONE THAT WAS GIVEN AT DELIVERY.
Q. OKAY.
A. AND AFTER THE POLICY WAS ESTABLISHED, THIS LETTER WAS GIVEN TO EVERYONE BEFORE - THAT TESTED POSITIVE.
Q. NOW WOULD YOU READ THAT LETTER TO THE JURY, PLEASE.
THE COURT: NOW THIS IS EXHIBIT 6?
MR. WHERRY: YES, SIR.
A. "REFERENCE SUBSTANCE ABUSE DURING PREGNANCY. TO WHOM IT MAY CONCERN. DURING YOUR RECENT MEDICAL EXAMINATION CONDUCTED IN CONNECTION WITH THE BIRTH OF YOUR CHILD YOU TESTED POSITIVE FOR DRUGS. BEFORE YOUR RELEASE FROM THE HOSPITAL YOU WILL BE COUNSELED ON THE HARMFUL EFFECTS OF DRUG USAGE TO YOU AND YOUR CHILD AND REFERRED TO SUBSTANCE ABUSE COUNSELING. THIS REFERRAL WILL GIVE YOU THE OPPORTUNITY TO REHABILITATE YOURSELF FOR THE GOOD OF YOURSELF AND YOUR CHILD. A REFERRAL

**[SHIRLEY BROWN 51]**

WILL ALSO BE MADE TO THE CHARLESTON COUNTY DEPARTMENT OF SOCIAL SERVICES UNDER SOUTH CAROLINA CHILD PROTECTION LAW.

DSS WILL DETERMINE WHETHER THE BEST INTERESTS OF YOUR CHILD REQUIRE THE REMOVAL OF THAT CHILD FROM YOUR CUSTODY DURING YOUR REHABILITATION. IF YOU FAIL TO COMPLETE SUBSTANCE ABUSE COUNSELING, FAIL TO COOPERATE WITH THE DEPARTMENT OF SOCIAL SERVICES IN THE PLACEMENT OF YOUR CHILD AND SERVICES TO PROTECT THAT CHILD, OR IF YOU FAIL TO MAINTAIN CLEAN URINE SPECIMENS DURING YOUR SUBSTANCE ABUSE REHABILITATION, YOU WILL BE ARRESTED BY THE POLICE AND PROSECUTED BY THE OFFICE OF THE SOLICITOR." SINCERELY YOURS, CHARLES MALONEY CONDON SOLICITOR. IT SAYS CMCFV. IT SAYS THEN I HAVE READ AND RECEIVED A COPY OF THIS LETTER. THERE IS A PLACE FOR THE PATIENT TO SIGN IT. THE DATE AND TO WITNESS SIGNATURES.

Q. AND THE PURPOSE OF THAT LETTER WAS NOT TO ARREST THEM AND PROSECUTE THEM, BUT WAS TO ASSURE THEY GOT TREATMENT AND THAT THEIR BABIES WERE TAKEN CARE OF, FAIR?

A. THAT IS CORRECT.

Q. OKAY. AND FROM TIME TO TIME VARIOUS WOMEN WERE ARRESTED PURSUANT TO THE THREAT, MY LANGUAGE, THAT IS IN THAT LETTER, FAIR?

A. THAT IS CORRECT.

Q. BUT THE PURPOSE OF THE ARREST, MS. BROWN, WAS NOT TO PUT

THEM INTO THE CRIMINAL JUSTICE SYSTEM, TO EXACT WHATEVER THE CRIMINAL JUSTICE SYSTEM DOES, THE PURPOSE OF THE ARREST WAS TO

**[SHIRLEY BROWN 52]**

GET THEM TREATMENT AND TO PROTECT THE BABY, FAIR?
A. THAT IS CORRECT.
Q. AND WHEN THEY WENT TO JAIL, AS LORI GRIFFIN DID, YOU HEARD HER TESTIMONY YESTERDAY?
A. THAT IS CORRECT.
Q. FOR THREE WEEKS, 80,000 DOLLARS BAIL, THE PURPOSE OF THAT WAS NOT TO PROSECUTE HER CRIMINALLY BUT TO GET HER TREATMENT AND TO PROTECT THE BABY? FAIR?
A. SHE WAS ACTUALLY ARRESTED BEFORE THE POLICY WENT INTO EFFECT.
Q. WITH THAT HAVING BEEN SAID, THE PURPOSE OF HER ARREST AND INCARCERATION WAS FOR - TO CAUSE HER TO GET TREATMENT AND FOR THE PROTECTION OF THE BABY, FAIR?
A. I REPORTED IT AS THE LEGAL DEPARTMENT TOLD ME TO, AND THAT WAS BEFORE THE DEVELOPMENT OF THE POLICY. IT WAS OUR HOPE OF THE MEDICAL UNIVERSITY THAT EVERYONE WAS GOING TO GET TREATMENT.
Q. SO THE ANSWER TO MY QUESTION IS YES?
A. YES.
Q. RIGHT. NOW, RETURN TO THE GUIDELINES FOR -

THE COURT: LET ME INTERRUPT YOU AGAIN SO I CAN BE SURE THAT THERE IS A CLEAR DISTINCTION BETWEEN THESE LETTERS.

NOW EXHIBIT 6, THE LETTER THAT YOU JUST READ, WHEN WAS THAT DELIVERED? WHEN WAS THAT GIVEN TO THE PATIENT?

THE WITNESS: WHEN THEY DELIVERED A CHILD THAT

**[SHIRLEY BROWN 53]**

TESTED POSITIVE FOR DRUGS. BUT THIS LETTER ACTUALLY DIDN'T GO INTO EFFECT UNTIL MARCH OF '90.

THE COURT: SO THAT LETTER WAS NOT DELIVERED TO ANY PATIENT UNLESS THEY DELIVERED A BABY THAT TESTED POSITIVE?

THE WITNESS: RIGHT.

THE COURT: OKAY.

Q. (BY MR. WHERRY, CONTINUING) MS. BROWN, THAT DIDN'T CONTINUE FOREVER, DID IT? THIS LETTER WAS GIVEN TO A LOT OF PATIENTS BEFORE THEY HAD THEIR BABIES, ISN'T THAT SO?

A. NOT THIS LETTER. THEY WAS ANOTHER LETTER GIVEN.

Q. A DIFFERENT LETTER OR WAS IT EXACTLY THE SAME?

A. IT WAS A DIFFERENT LETTER.

Q. AND DID THAT LETTER ALSO PROMISE OR THREATEN PROSECUTION IF THEY DID NOT SEEK TREATMENT?

A. YES, IT DID.

Q. SO INSOFAR AS THE BOTTOM, THE LAST SENTENCE?

THE COURT: LET'S IDENTIFY THAT LETTER. WHAT'S ITS NUMBER?

MR. WHERRY: YES, SIR. IF I MAY HAVE THE BOOK.

THE COURT: I DON'T WANT TO BE SO PRECISE AND INTERFERE WITH THE INTRODUCTION OF EVIDENCE, BUT - BUT I HAVE CERTAIN DECISIONS TO MAKE IN THIS CASE AND I WANT TO BE SURE THAT I UNDERSTAND EXACTLY WHERE THESE PIECES FIT SO THAT I CAN INTELLIGENTLY OR MORE INTELLIGENTLY MAKE THOSE DECISIONS.

Q. (BY MR. WHERRY, CONTINUING) JOINT EXHIBIT 5 WAS GIVEN TO

**[SHIRLEY BROWN 54]**

THE WOMEN DURING PREGNANCY, FAIR?

A. THAT IS CORRECT.

Q. AND THE END OF IT IS EXACTLY THE SAME AS 6, ISN'T IT?

A. IT SAYS IF YOU FAIL TO ATTEND SUBSTANCE ABUSE AND PRENATAL CARE YOU WILL BE ARRESTED BY THE CHARLESTON CITY POLICE AND PROSECUTED BY THE OFFICE OF SOLICITOR.

Q. NOW LET ME REPHRASE.

THE COURT: AGAIN, WHAT TRIGGERS THAT LETTER? WHO GOT THAT LETTER?

THE WITNESS: ANYBODY WHO TESTED POSITIVE, DURING THEIR PREGNANCY BUT HAD NOT DELIVERED YET.

THE COURT: OKAY.

Q. (BY MR. WHERRY, CONTINUING) THAT WAS A JOINT EXHIBIT NUMBER 7, ISN'T IT?
A. THIS HAS A 5 ON IT.
Q. YES, AND THE ONE FOLLOWING THAT HAS A 6 ON IT?
A. RIGHT.
Q. AND THE ONE FOLLOWING THAT HAS A 7 ON IT, RIGHT?
A. RIGHT.
Q. JOINT EXHIBIT NUMBER 7 IS ALSO A SOLICITOR'S LETTER, ISN'T IT?
A. YES, IT IS.
Q. AND THAT SOLICITOR'S LETTER IS SUBSTANTIALLY THE SAME INSOFAR AS THE THREAT OF PROSECUTION AS 5 AND 6 ARE EXCEPT THAT THERE CAME TO BE A NEW SOLICITOR, RIGHT?

* * *

**[SHIRLEY BROWN 58]**

Q. (BY MR. WHERRY, CONTINUING) DO YOU RECOGNIZE THE IMPORTANCE OF KEEPING PATIENTS' RECORDS CONFIDENTIAL?
A. YES, I DO.
Q. AND I TAKE IT THAT PARTICULARLY BECAUSE OF THE NATURE OF SUBSTANCE ABUSE RECORDS, THAT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA, AND YOU, WERE EVEN MORE AWARE OF THAT CONFIDENTIALITY REQUIREMENT?
A. ALL MEDICAL RECORDS ARE TO BE MAINTAINED CONFIDENTIAL.

Q. AND ARE YOU AWARE OF A PARTICULAR CLASS OF MEDICAL RECORDS THAT REQUIRES MORE CONFIDENTIALITY PURSUANT TO FEDERAL LAW?

A. I UNDERSTAND THAT THE RECORDS IN THE INSTITUTE OF PSYCHIATRY ARE KEPT SEPARATE FROM OURS AND GO UNDER DIFFERENT RULES AND REGULATIONS.

Q. MS. BROWN, YOU'RE AWARE NOW AS YOU SIT THERE OF THE FACT THAT RECORDS OF SUBSTANCE ABUSE DIAGNOSIS, TREATMENT OR COUNSELING MUST RECEIVE SPECIAL CONFIDENTIALITY ATTENTION ALSO?

A. IN THE CONTEXT OF SUBSTANCE ABUSE COUNSELING.

Q. AND DIAGNOSIS AND TREATMENT, FAIR?

A. DIAGNOSIS AND TREATMENT IS MY BASIC UNDERSTANDING.

Q. SO YOU WOULD AGREE WITH ME THAT MEDICAL RECORDS CONCERNING SUBSTANCE ABUSE DIAGNOSIS, TREATMENT AND COUNSELING MUST RECEIVE SPECIAL CONFIDENTIALITY ATTENTION?

A. AS EXPLAINED TO ME FROM THE INSTITUTE OF PSYCHIATRY, THEY

**[SHIRLEY BROWN 59]**

WOULD HAVE TO HAVE THAT TYPE OF CONFIDENTIALITY.

Q. BUT, IN '89 AND '90, WHEN THIS POLICY WAS, WHATEVER

VERSION OF IT WE'RE DEALING WITH WAS IMPLEMENTED, YOU WEREN'T EVEN AWARE OF THAT, WERE YOU?
A. NO, I WAS NOT.
Q. AND IN YOUR OFFICE BEGINNING AT THAT TIME OR MAYBE EVEN BEFORE THAT, YOU KEPT A ROLODEX, DIDN'T YOU?
A. THAT IS CORRECT.
Q. AND ON THAT ROLODEX YOU KEPT THE NAMES AND PHONE NUMBERS OF INDIVIDUALS WHO TESTED POSITIVE FOR SUBSTANCE - FOR CONTROLLED SUBSTANCES, FAIR?
A. I KEPT NAMES BUT NO PHONE NUMBERS.
Q. AND YOU ALSO KEPT INFORMATION ABOUT POSITIVE DRUG SCREENS, DIDN'T YOU?
A. THAT IS CORRECT.
Q. AND THAT ROLODEX WAS NOT IN A FILE CABINET OR A MEDICAL RECORDS ROOM OR ANYTHING LIKE THAT, WAS IT?
A. IT WAS LOCKED UP IN MY OFFICE.
Q. I THINK MY QUESTION WAS: IT WASN'T IN A FILE CABINET OR A SPECIAL RECORD ROOM, WAS IT?
A. NO, IT WASN'T..
Q. YOU SHARED YOUR OFFICE AT THAT TIME WITH SOMEONE ELSE, DIDN'T YOU?
A. NOT IN 1989 AND '90. I DID LATER ON.
Q. AND WHO DID YOU SHARE IT WITH?

**[SHIRLEY BROWN 60]**

A. THE SOCIAL WORKER AND MELESIA HENRY, ANOTHER OUTCOME

MANAGER.
Q. NOW THE SOCIAL WORKER AND OUTCOME MANAGER, WERE THEY PEOPLE WHO HAD A NEED TO HAVE ACCESS TO THE SUBSTANCE ABUSE RECORDS OF PATIENTS?
A. THAT IS CORRECT. SOCIAL WORKER SAW ALL PATIENTS.
Q. BUT THERE ALSO CAME A POINT IN TIME AT WHICH REPRESENTATIVES FROM THE SOLICITOR'S OFFICE, THE PROSECUTOR OF THIS COUNTY, WOULD COME TO YOUR OFFICE, SIT AT YOUR DESK WHERE THAT ROLODEX WAS AND GO THROUGH YOUR SUBSTANCE ABUSE DIAGNOSIS, TREATMENT AND COUNSELING RECORDS FOR THEIR PROSECUTORIAL PURPOSES, ISN'T THAT SO?
A. I DID NOT KEEP ANY RECORD RELATED TO ANY COUNSELING OR THAT TYPE THING IN MY OFFICE.
Q. LET ME TAKE COUNSELING OUT OF MY QUESTION. REPRESENTATIVES FROM THE SOLICITOR'S OFFICE WOULD COME TO YOUR OFFICE, SIT AT YOUR DESK, GO THROUGH, AMONG OTHER THINGS, YOUR ROLODEX, AND SOMETIMES YOUR FILES WHERE YOU KEPT SOLICITOR'S LETTERS, TO GATHER INFORMATION FOR THEIR PROSECUTORIAL PURPOSES; ISN'T THAT RIGHT?
A. THERE WAS A REPRESENTATIVE FROM THE SOLICITOR'S OFFICE THAT CAME TO GET THE NAMES OF THE PEOPLE THAT LETTERS HAD BEEN ISSUED ON.

Q. THAT'S THE ONLY PURPOSE ANYONE FROM THE SOLICITOR'S OFFICE WOULD COME TO YOUR OFFICE FOR DURING THE ENTIRE COURSE

**[SHIRLEY BROWN 61]**

OF THIS POLICY WAS TO GET NAMES OF PEOPLE YOU HAD GIVEN SOLICITOR'S LETTERS TO?
A. IT WAS MY UNDERSTANDING FROM THE LEGAL OFFICE AT THE MEDICAL UNIVERSITY THAT THE SOLICITOR'S OFFICE WOULD BE THE ONE THAT WAS RESPONSIBLE FOR TRACKING THE COMPLIANCE. I.E., THE LETTERS. AND THAT THEY WERE TO BE KEPT IN MY OFFICE AND THAT THEY WOULD COME AND GET THE NAME OF THOSE PEOPLE.
Q. MY QUESTION WASN'T WHY. MY QUESTION WAS: WAS THAT THE ONLY REASON THAT THEY CAME TO YOUR OFFICE AND WENT THROUGH YOUR RECORDS TO FIND OUT WHO HAD BEEN GIVEN SOLICITOR'S LETTERS?
A. THAT WAS THE PURPOSE OF THEM COMING, YES, IT WAS.
Q. WAS THAT THE ONLY REASON?
A. YES IT WAS, TO MY KNOWLEDGE.
Q. AND THEY WOULD COME AS FREQUENTLY AS ONCE A WEEK AND COME INTO YOUR OFFICE AND GO THROUGH THE ROLODEX AND SOLICITOR'S LETTERS, RIGHT?
A. THAT IS CORRECT.
Q. AND IN FACT, THE PERSON FROM THE SOLICITOR'S OFFICE WHO

REGULARLY CAME WAS A PERSON WHO USED TO WORK WITH YOU AS A SOCIAL WORKER, RIGHT?
A. NO. SHE WORKED FOR THE SOLICITOR'S OFFICE BEFORE SHE GOT A JOB AT THE MEDICAL UNIVERSITY.
Q. SO SHE WORKED WITH THE SOLICITOR'S OFFICE AND THEN CAME TO WORK FOR THE HOSPITAL?

**[SHIRLEY BROWN 62]**

A. I THINK SHE WENT TO WORK SOMEWHERE ELSE BEFORE SHE CAME TO WORK FOR THE HOSPITAL, BUT I DON'T KNOW THE EMPLOYMENT HISTORY.
Q. WHEN THE SOLICITOR'S OFFICE CAME TO GET THIS INFORMATION, DID YOU HAVE ANY AUTHORIZATION, ANY PERMISSION SIGNED BY ANY PATIENT, THAT AUTHORIZED YOU TO RELEASE THAT INFORMATION TO THE SOLICITOR?
A. NO, I DIDN'T.
Q. WHEN YOU CONTACTED OR HAD DEALINGS WITH THE CHARLESTON POLICE DEPARTMENT, AND TOLD THEM ABOUT POSITIVE URINE SCREENS, DRUG URINE SCREENS, DID YOU HAVE ANY PERMISSION, SIGNED BY ANY PATIENT TO RELEASE THAT INFORMATION TO THE POLICE?
A. JUST THE UNDERSTANDING FROM THE LEGAL COUNSEL THAT ANYTIME THERE WAS AND ABUSE OR NEGLECT CASE THAT WE HAD TO RELEASE THE INFORMATION.

Q. AND THAT IS NO DOUBT YOUR REASON FOR WHY YOU DID HAVE IT, I'M NOT ASKING FOR THAT. I'M ASKING: DID YOU HAVE A MEDICAL RELEASE FORM, A PIECE OF PAPER SIGNED SAYING I AUTHORIZE MUSC TO TELL THE POLICE ABOUT MY UDS?

A. NO, I DIDN'T.

Q. NOW THE MEDICAL RECORDS DEPARTMENT OF MUSC AND THE ENTIRE HOSPITAL POLICY IS SUCH THAT MEDICAL RECORDS WILL NOT BE RELEASED FROM THE HOSPITAL TO ANY THIRD PERSON WITHOUT AND AUTHORIZATION SIGNED BY THE PATIENT OR OTHER AUTHORIZING DOCUMENTS?

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**[SHIRLEY BROWN 72]**

STATE LAW OF INSTANCES OF CHILD ABUSE AND NEGLECT TO THE APPROPRIATE STATE AND LOCAL AUTHORITIES. SO ON THIS ISSUE OF PRIVACY, WE HAVE A SPECIFIC STATE AND FEDERAL STATUTE REQUIRING IT AND WAIVING ANY PURPORTED PRIVILEGE.

THE COURT: YOUR STATEMENT IS IN THE RECORD FOR WHATEVER RELEVANCE IT MAY HAVE.

MR. HOOD: YES, SIR.

THE COURT: I HAD INTENDED MAKING THAT FINDING OF FACT BEFORE LUNCH AND WE REALLY GOT SO TIED UP IN CONSIDERING THE EVIDENCE AND RULING ON IT THAT I DIDN'T HAVE AN

OPPORTUNITY TO DO SO. BUT OBVIOUSLY THOSE WERE THE CONCERNS THAT I HAD WHEN I TOOK THE ACTION THAT I DID.

MS. BROWN, I BELIEVE THAT YOU'RE ON THE WITNESS STAND. YOU MAY RETURN AND I WILL REMIND YOU THAT YOU ARE STILL UNDER OATH.

(JURY ENTERS AT 3:00 P.M.)

THE COURT: ALL RIGHT, SIR, YOU MAY CONTINUE.

MR. WHERRY: THANK YOU.

Q. (BY MR. WHERRY, CONTINUING) MS. BROWN, IN '89 AND '90, AT THE BEGINNING OF THE POLICY, YOU WERE NOT FAMILIAR WITH THE CONCEPT "INFORMED CONSENT", WERE YOU?

A. NO, SIR, I WAS NOT.

Q. NOW I TAKE IT THAT YOU ARE FAMILIAR WITH THAT CONCEPT?

A. YES, I AM.

Q. AND WOULD YOU AGREE WITH ME THAT INFORMED CONSENT MEANS

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**[SHIRLEY BROWN 78]**

WE NEED TO GET SOME EVIDENCE IN BEFORE WE START USING INNUENDO TO PROVE SOMETHING THAT IMPORTANT AND THAT'S WHY I'M SUSTAINING THE OBJECTION AT THIS TIME.

MR. WHERRY: VERY WELL, SIR.

THE COURT: BUT AS FAR AS WHO THE PATIENT IS AND THE REST OF IT, YOU CAN GO INTO THAT.

Q. (BY MR. WHERRY, CONTINUING) PRIOR TO THE IMPLEMENTATION OF THE PROGRAM, WHICH BEGAN IN THE FALL OF '89, I THINK?
A. THAT'S CORRECT.
Q. WAS A NEEDS ASSESSMENT DONE BY MUSC OR ANYONE THAT YOU'RE AWARE OF WITH RESPECT TO SUBSTANCE ABUSING PREGNANT WOMEN?
A. IN DEFINING NEEDS ASSESSMENT, ARE YOU TALKING ABOUT WHAT THEY NEEDED AS FAR AS TREATMENT OR A NEEDS ASSESSMENT ABOUT THEIR MEDICAL CARE? I NEED FOR YOU TO CLARIFY NEEDS ASSESSMENT.
Q. ANY OF THOSE. AVAILABILITY OF SUBSTANCE ABUSE TREATMENT, MOST EFFECTIVE METHODS OF TREATMENT, ANY OF THOSE THINGS?
A. CITY OF CHARLESTON SUBSTANCE ABUSE WAS AT THE INITIAL MEETING AND THEY WERE THE ONES RESPONSIBLE FOR THE SUBSTANCE ABUSE TREATMENT IN THE BEGINNING IN 1989.
Q. IN FACT, MS. BROWN, HAVE YOU BEEN ASKED THAT QUESTION PREVIOUSLY, PAGE 131, LINE 23.YOU INDICATED THAT THERE WAS NO NEEDS ASSESSMENT PERFORMED, DIDN'T YOU?
MR. HOOD: I WOULD ASK THAT HE FOLLOW THE RULE.
MR. WHERRY: I UNDERSTAND THE RULES IN THIS

JURISDICTION.

THE COURT: I DON'T KNOW THE RULE IS DIFFERENT ANYWHERE. ANY WITNESS THAT IS BEING QUESTIONED ABOUT A PRIOR INCONSISTENT STATEMENT HAS A RIGHT TO SEE THAT INCONSISTENT STATEMENT OR EITHER ADMIT IT OR DENY IT. AND IF THAT RULE IS DIFFERENT SOMEWHERE ELSE, I DON'T KNOW ABOUT IT.

MR. WHERRY: I WILL BE PLEASED TO FOLLOW IT.

THE COURT: OKAY.

Q. (BY MR. WHERRY, CONTINUING) PAGE 131.

MR. HOOD: FIVE DAYS OF TESTIMONY, CAN WE GET THE DAY.

MR. WHERRY: VOLUME 1, PAGE 131, LINE 21.

Q. (BY MR. WHERRY, CONTINUING) WHEN ASKED: "OKAY, BUT DID YOU DO ANY SPECIFIC NEEDS ASSESSMENT FOR PREGNANT WOMEN WITH COCAINE PROBLEMS?"

WOULD YOU READ TO US PLEASE ON LINE 23 WHAT YOUR ANSWER WAS?

A. "NO SPECIFIC NEEDS ASSESSMENT."

Q. THANK YOU.

A. BUT THAT'S WHY I ASKED YOU TO DEFINE NEEDS ASSESSMENT, WHAT DATE AND TIME.

Q. MS. BROWN, MY QUESTION SIMPLY WAS WOULD YOU READ WHAT YOUR ANSWER WAS.

THE COURT: SHE HAS A RIGHT TO EXPLAIN THAT ANSWER.

I DON'T KNOW WHAT HER EXPLANATION WAS, BUT YOU'RE ENTITLED TO

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**[SHIRLEY BROWN 82]**

A. I DO NOT KNOW. I WASN'T IN CHARGE OF THAT COMMITTEE.
Q. OKAY. THE SCAN COMMITTEE, MS. BROWN, YOU WERE A MEMBER OF THE SCAN COMMITTEE, WEREN'T YOU?
A. YES, I WAS.
Q. AND YOU WERE THE PERSON WHO WOULD OFTEN DO THE REPORTING AT THE SCAN COMMITTEE, WEREN'T YOU?
A. ON THE CASES THAT RELATED TO COCAINE ABUSE, YES.
Q. SO APPROXIMATELY WHEN DID THE SCAN COMMITTEE FIRST FORM? APPROXIMATELY WHEN DID IT BEGIN TO MEET?
A. I WAS NOT ON THE INITIAL SCAN COMMITTEE. IT - I DO NOT KNOW WHAT DATE IT BEGAN. I HAVE NO IDEA. I WASN'T ON THE INITIAL COMMITTEE.
Q. THE SOLICITOR'S LETTERS WHICH WE HAVE LOOKED AT AND COMPARED, JOINT EXHIBIT 5, 6 AND 7, DO YOU RECALL THEM?
A. YES, I DO.
Q. THE SOLICITOR'S LETTERS WERE GIVEN TO YOU SIGNED FOR YOUR DISTRIBUTION TO PATIENTS AT YOUR DISCRETION; IS THAT FAIR?
A. THEY WERE GIVEN TO ME TO GIVE TO PATIENTS WHO MET THE CRITERIA.

Q. AND AFTER YOU GAVE A SOLICITOR'S LETTER TO A PATIENT,
AFTER YOU GAVE A SOLICITOR'S LETTER TO THEM YOU WERE NOT
REQUIRED-TO NOTIFY THE SOLICITOR'S OFFICE THAT YOU HAD DONE
THAT, WERE YOU?
A. WHEN THE POLICY WAS DEVELOPED IT WAS THE RESPONSIBILITY
OF THE SOLICITOR'S OFFICE TO COME TO THE MEDICAL UNIVERSITY

**[SHIRLEY BROWN 83]**

AND GET THE NAMES.
Q. THE ONLY TIME IN WHICH YOU NOTIFIED THE SOLICITOR'S
OFFICE THAT YOU HAD GIVEN PATIENTS ONE OF THESE LETTERS IS
WHEN YOU DETERMINED THAT THE PERSON HAD NOT RECEIVED
APPROPRIATE TREATMENT; IS THAT FAIR?
A. IF A PATIENT - THAT'S NOT FAIR. BECAUSE A PATIENT COULD
HAVE RECEIVED A LETTER AND OR CONTINUING TO HAVE POSITIVE
URINE DRUG SCREENS, BUT WAS IN TREATMENT, AND THE CITY OF
CHARLESTON SUBSTANCE ABUSE SAID THAT, YOU KNOW, THEY FELT THAT
THIS PERSON WAS MAKING PROGRESS, ETCETERA, THEN I WOULD NOTIFY
- ASK THE SOLICITOR'S OFFICE NOT TO HAVE TO TURN THEM OVER
TO THE POLICE BECAUSE THE SUBSTANCE ABUSE PEOPLE SAID THEY
WERE TRYING.
Q. OKAY. BUT WHEN IN YOUR OPINION THERE WAS NON-COMPLIANCE,

YOU WERE THE ONE WHO NOTIFIED THE SOLICITOR'S OFFICE; IS THAT FAIR?

A. I DID NOT MAKE THE OPINION ABOUT NON-COMPLIANCE. WHEN A LETTER WAS SENT TO ME BY WHOEVER WAS DOING THE SUBSTANCE ABUSE TREATMENT STATING THAT THE PERSON WAS NOT COMPLIANT WITH TREATMENT AND WAS DROPPED OUT OF TREATMENT IS WHEN THEY WOULD BE NOTIFIED, OR IF. THEY NEVER WENT INTO TREATMENT.

Q. I WILL COME BACK TO THIS AREA IN JUST A MOMENT, BUT LET ME CLEAR SOMETHING UP. BEFORE THEY WENT INTO TREATMENT WHEN A SUBSTANCE ABUSE LETTER WAS GIVEN, AT ABOUT THAT TIME THEY WERE ALSO SHOWN A VIDEO WEREN'T THEY?

**[SHIRLEY BROWN 84]**

A. YES.

Q. AND THE VIDEOTAPE THEY WERE SHOWN WAS ON THE BAD EFFECTS OF SUBSTANCE ABUSE AND PREGNANCY?

A. ON THE HORRIBLE EFFECTS OF SMOKING CIGARETTES, TAKING OVER-THE-COUNTER DRUGS AND ANY OTHER ILLEGAL DRUGS.

Q. AND THEY WERE GIVEN A LETTER FROM THE MEDICAL STAFF AT MUSC ABOUT THE HARMFUL EFFECTS OF USING DRUGS PRENATAL, FAIR?

A. THAT'S CORRECT.

Q. IN ADDITION TO THAT, EACH ONE OF THEM WAS MET BY YOU AND

WAS GIVEN SUBSTANCE ABUSE COUNSELING, EXPLAINING THE IMPORTANCE OF TREATMENT, THE IMPORTANCE OF CARE FOR THEIR UNBORN CHILD. IS THAT FAIR?

A. I NEVER GAVE SUBSTANCE ABUSE COUNSELING.

Q. WELL, DID YOU TELL THE PATIENT THE IMPORTANCE OF TREATMENT?

A. I DISCUSSED WITH THE PATIENT THE HARMFUL EFFECTS OF COCAINE USE TO THEM AND THEIR UNBORN CHILD, TOLD THEM OF THE DIFFERENT PROGRAMS THAT WERE AVAILABLE IN THE CHARLESTON AREA. AND THEY SELECTED WHETHER THEY WANT INPATIENT OR OUTPATIENT. AND THEN A REFERRAL WAS MADE. AND THAT AGENCY WOULD THEN DO AN ASSESSMENT AS TO WHAT THEY NEEDED.

Q. I TAKE IT, MS. BROWN THAT THE PURPOSE OF YOU DOING THAT WAS TO TRY TO ENCOURAGE THEM TO GET TREATMENT, BECAUSE THAT WAS THE WHOLE PURPOSE OF THE POLICY, RIGHT?

A. THAT IS CORRECT.

**[SHIRLEY BROWN 85]**

Q. AND SO IN TRYING TO ENCOURAGE THEM TO GET TREATMENT, DID YOU FORM A THERAPEUTIC ALLIANCE WITH THEM TO TRY TO - TO TRY TO ENCOURAGE THEM TO GET THAT TREATMENT?

A. I ENCOURAGED EVERYONE TO DO ANYTHING THAT THEY COULD TO HELP THEMSELVES AND THAT LITTLE BABY, AND GETTING TREATMENT WAS AN IMPORTANT THING.
Q. BUT IT IS YOUR POSITION THAT THAT IS NOT SUBSTANCE ABUSE COUNSELING; IS THAT RIGHT?
A. THAT IS NOT SUBSTANCE ABUSE COUNSELING.
Q. YOU WOULD AGREE THAT THE RECOGNITION OF A POSITIVE UDS FOR SUBSTANCE ABUSE IS A DIAGNOSIS?
A. NO, I WOULD NOT.
Q. AS YOU CAN SEE, A SOLICITOR'S LETTER WAS REFERRED TO THE SOLICITOR'S OFFICE FOR PROSECUTION BECAUSE OF NONSUCCESSFUL COMPLETION OF SUBSTANCE ABUSE TRAINING. HOW WOULD THE SOLICITOR'S OFFICE LEARN THAT?
A. IF I OR ONE OF THE DESIGNEES, WHOEVER WAS WORKING, WAS NOTIFIED OR RECEIVED A LETTER FROM THE PLACE THAT THEY WERE SUPPOSED TO BE GETTING TREATMENT SAYING THAT THE PERSON WAS NONCOMPLIANT WITH TREATMENT, THEN IT WOULD BE TURNED OVER.
Q. SO THE SUBSTANCE ABUSE OF - CHARLESTON COUNTY SUBSTANCE ABUSE PROGRAM WOULD TELL YOU THE PATIENT WAS NONCOMPLIANT?
A. IT COULD HAVE BEEN THEM OR ANY OF THE OTHER PROGRAMS THAT THE PATIENTS WENT INTO.
Q. DID YOU EVER RECEIVE, FROM ANY OF THE PATIENTS, THEIR

**[SHIRLEY BROWN 86]**

WRITTEN CONSENT FOR YOU TO REDISCLOSE THAT INFORMATION TO THE SOLICITOR'S OFFICE?

A. NO, I DID NOT.

Q. THE POSITIVE DRUG SCREEN WAS A DETERMINING FACTOR TO YOU DETERMINING WHETHER THEY NEEDED SUBSTANCE ABUSE TREATMENT, RIGHT?

A. WHENEVER THERE WAS A POSITIVE URINE DRUG SCREEN THEN WE WERE TO REFER ANYONE WITH A POSITIVE URINE DRUG SCREEN FOR SUBSTANCE ABUSE EVALUATION AND TREATMENT DEEMED NECESSARY BY THE PEOPLE WHO SPECIALIZED IN SUBSTANCE ABUSE.

Q. IN THE FALL OF '89, THE ONLY REASONABLE AVAILABLE DRUG TREATMENT PROGRAM IN THE CHARLESTON AREA WAS THE CHARLESTON COUNTY SUBSTANCE ABUSE TREATMENT PROGRAM, ISN'T THAT FAIR, FOR INDIGENT WOMEN?

A. THAT IS CORRECT.

Q. SO WHEN YOU INDICATED THAT THEY WERE GIVEN THE OPTIONS OF WHERE TO GET SUBSTANCE ABUSE TREATMENT, THE OPTION WAS REALLY THE CHARLESTON COUNTY PROGRAM, OR NONE, FOR INDIGENT WOMEN?

A. INITIALLY THAT WAS THE ONLY PROGRAM AVAILABLE.

Q. AT SOME LATER POINT IN TIME SOME OTHER PROGRAMS BEGAN TAKING MEDICAID; IS THAT RIGHT?

A. THAT IS CORRECT.

Q. AS A MATTER OF FACT, EVEN IN THE EARLY STAGES OF THE PROGRAM, MUSC PSYCHIATRIC DEPARTMENT DIDN'T GIVE SUBSTANCE ABUSE COUNSELING TO INDIGENT WOMEN, DID THEY?

**[SHIRLEY BROWN 87]**

A. AT THAT POINT IN TIME THE FEDERAL GOVERNMENT WOULD NOT PAY FOR INPATIENT TREATMENT IN THE STATE OF SOUTH CAROLINA.
Q. SO I TAKE IT THE ANSWER IS NO?
A. THAT'S RIGHT.
Q. AND THE MUSC DEPARTMENT OF PSYCHIATRY DIDN'T HAVE ANY OUTPATIENT SUBSTANCE ABUSE TREATMENT PROGRAM DID THEY?
A. NO, THEY DID NOT AT THAT TIME, TO MY KNOWLEDGE.
Q. NOW AT SOME POINT IN TIME MEDICAID OR SOME OTHER PROGRAMS BEGAN TO ACCEPT MEDICAID FUNDING OR MEDICAID PAYMENT, RIGHT?
MEDICAID CLIENTS?
A. THAT IS CORRECT.
Q. AND APPROXIMATELY WHEN DID THAT BEGIN TO HAPPEN? WHEN WAS THE FIRST?
A. I'M SORRY, I DON'T REMEMBER. I THINK IT WAS IN THE NINETIES, BUT IT COULD HAVE BEEN '91. I REALLY DO NOT RECALL.
Q. JUST IN CASE I LEFT SOMETHING OUT, BESIDES REPRESENTATIVES OF MUSC AND THE SOLICITOR'S OFFICE AND

SOMETIMES THE POLICE DEPARTMENT AND DSS, WHAT OTHER KIND OF PEOPLE ATTENDED THESE SCAN MEETINGS?
A. PEOPLE FROM THE DEVELOPMENTAL CLINIC AND THERE WAS USUALLY A PEDIATRICIAN THERE THAT SPECIALIZED IN ABUSE AND NEGLECT.
Q. YOU INDICATED, MS. BROWN, THAT YOU WEREN'T GIVING SUBSTANCE ABUSE COUNSELING. WAS ANYONE IN THE MUSC OB DEPARTMENT GIVING SUBSTANCE ABUSE COUNSELING?

**[SHIRLEY BROWN 88]**

A. NOT TO MY KNOWLEDGE, NOT IN THE DEPARTMENT OF OB.
MR. WHERRY: IF I MAY, YOUR HONOR. PAGE 262, LINE 4.
Q. (BY MR. WHERRY, CONTINUING) AT PAGE 262, MS. BROWN, LINE 4, YOU REFER TO - YOU GIVE AN ANSWER TO A QUESTION. WHICH IS NOT GOING TO BE A RELEVANT QUESTION TO ANYBODY, BUT WHAT - ON PAGE 261, LINE 23:
QUESTION: "WHAT IS THE LANGUAGE IN THE NEXT TO LAST PARAGRAPH IN THE RIGHT-HAND COLUMN OF PAGE 530, CAN YOU TELL ME IN YOUR OWN WORDS WHAT THAT MEANS TO YOU?"
YOUR ANSWER. WOULD YOU READ YOUR ANSWER TO THAT QUESTION.

A. "I THINK THAT IS SELF-EXPLANATORY. IT SAYS THAT IT WAS NOT DESIGNED AS A PUNITIVE MEASURE AND THE POLICY WAS NOT. IT WAS TO GIVE SOME TEETH TO OUR COUNSELING EFFORTS. COUNSELING EFFORTS RELATED TO THE PATIENT UNDERSTANDING THE RISK TO HER AND HER UNBORN CHILD OR TO HER CHILD IN RELATION TO HARM THAT COULD COME TO HER, INCLUDING HER OWN DEATH. WE WERE CONCERNED ABOUT PATIENTS ABRUPTING. AND THAT IS THE COUNSELING EFFORTS WE WERE TALKING ABOUT, TO THE BEST OF MY RECOLLECTION."

Q. THE ANSWER DOES GO ON. YOU'RE FREE TO READ IT IF YOU WOULD LIKE TO. IF YOU WOULD RATHER STOP YOU CAN.

A. "AND LOOKING AT THE NUMBER OF PEOPLE WHO WERE GOING INTO TREATMENT AND THE GOAL OF OUR PROGRAM WAS FETAL PROTECTION, AND THE FETUS TURNS INTO A CHILD AS SOON AS ITS FEET COME OUT

**[SHIRLEY BROWN 89]**

AT THE TIME OF BIRTH, AND NOT MATERNAL PROSECUTION. I MEAN, WE WERE NOT INTERESTED IN HEALTH CARE PROVIDERS AND MATERNAL PROSECUTION, WE WERE INTERESTED IN PROTECTING THE UNBORN CHILD AND THE CHILD FROM FURTHER ABUSE AND NEGLECT."

Q. MY FOCUS, MS. BROWN, IS UP AT THE START OF THAT ANSWER.

YOU INDICATED THAT IT WAS TO GIVE SOME TEETH TO OUR COUNSELING EFFORTS. COUNSELING EFFORTS RELATED TO THE PATIENT'S UNDERSTANDING THE RISK TO HER, DOT, DOT, DOT.

IF YOU OR NO ONE ELSE WAS DOING ANY SUBSTANCE ABUSE COUNSELING AT MUSC, TO WHAT WERE YOU REFERRING WHEN YOU REFERRED TO "OUR COUNSELING EFFORTS RELATED TO THE PATIENT'S UNDERSTANDING OF THE RISK TO HER"?

A. THE PROBLEMS THAT CAN OCCUR TO HER RELATED TO HER PREGNANCY AND COCAINE ABUSE, THAT IS AN EDUCATIONAL COUNSELING EFFORT. WE DO NOT GO INTO AND I CANNOT EVEN DISCUSS SUBSTANCE ABUSE COUNSELING, YOU KNOW, STEP PROGRAMS AND ALL OF THE THINGS THAT THEY DO. WE -

Q. THAT WHO DOES?

A. THAT SUBSTANCE ABUSE COUNSELORS DO OR INSTITUTE OF PSYCHIATRY AND VARIOUS PLACES. THIS WAS TRULY COUNSELING DEFINED IN THIS TERMS AS OUR EDUCATIONAL EFFORTS. I TALKED TO THEM AND TRIED TO LET THEM UNDERSTAND ALL OF THE MEDICAL PROBLEMS THAT COULD OCCUR TO THEM FOR CONTINUED USE INCLUDING THEIR DEATH. AND TO ME, THAT IS NOT SUBSTANCE ABUSE COUNSELING, THAT IS JUST TRYING TO EDUCATE A PERSON ABOUT ALL

OF THE THINGS THAT CAN HAPPEN TO THEM.
Q. WHEN THEY USE ILLEGAL SUBSTANCES DURING THEIR PREGNANCY?
A. THAT IS CORRECT. OR AT ANY POINT IN TIME BECAUSE SOME OF THESE WOMEN HAD ALREADY DELIVERED.
Q. LET ME REFER YOU TO JOINT EXHIBIT NUMBER 2, WHICH IS IN EVIDENCE. MS. BROWN, THAT APPEARS TO BE YET A THIRD VERSION OF THE POLICY. IS IT?
A. IT APPEARS TO BE THE - THEY REDID THE POLICY MANUALS AND NOW IT'S AN M-7 POLICY. TO ME IT SAYS THE BASIC SAME THINGS, BUT THE FORMAT OF THE MEDICAL UNIVERSITY POLICY AND PROCEDURES CHANGED. WHAT HAD TO BE INCLUDED IN THE POLICY.
Q. I UNDERSTAND THAT IT'S YOUR POSITION THAT THERE IS NO SUBSTANTIVE DIFFERENCE, BUT INSOFAR AS THERE IS SOME DIFFERENCE, SUBSTANTIVE OR NOT, IT IS YET A THIRD VERSION OF THE POLICY; IS THAT RIGHT?
A. THAT IS CORRECT.
Q. AND WHEN WAS THIS THIRD VERSION OF THE POLICY APPROVED OR IMPLEMENTED?
A. I'LL HAVE TO LOOK ON THE BACK TO SEE WHAT DATE.
Q. WHEREVER YOU WOULD LIKE, MA'AM.
A. IT SAID THE DATE REVIEWED WAS MARCH OF '93. AND THE LEGAL REVIEW DATE WAS IN MARCH OF '93.

Q. THANK YOU. DID ANYONE AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA KEEP OR MAKE STATISTICAL RECORDS OF THE RACIAL MAKEUP OF THOSE WHO WERE SELECTED FOR DRUG SCREENING PURSUANT TO THE

**[SHIRLEY BROWN 91]**

INTERAGENCY POLICY?
A. NOT TO MY KNOWLEDGE.
Q. WHEN YOU RECEIVED WRITTEN NOTIFICATION OF NONCOMPLIANCE FROM THE CITY OF CHARLESTON SUBSTANCE ABUSE TREATMENT PROGRAM, IT WOULD BE YOU WHO WOULD PICK UP THE PHONE AND CALL THE POLICE AND NOTIFY THEM, FAIR?
A. THAT IS CORRECT.
Q. AND YOUR CONTACT PERSON WITH THE CHARLESTON POLICE DEPARTMENT WAS DETECTIVE WARING, WARING, RIGHT?
A. THAT IS CORRECT.
Q. AND DETECTIVE WARING, AFTER YOUR PHONE CONVERSATION, WOULD COME TO THE HOSPITAL EITHER ALONE OR WITH OTHERS AND CONSUMMATE THE ARREST OF PEOPLE WHO WERE GOING TO BE ARRESTED, FAIR?
A. THAT IS CORRECT.
Q. FOR MANY OF THOSE ARRESTS YOU WERE PRESENT?
A. I WAS.
Q. DID YOU EVER NOTIFY, EVER NOTIFY A PATIENT BEFORE THE ARREST WAS TO TAKE PLACE THAT THEY WERE GOING TO BE ARRESTED?

A. I DO NOT EVER RECALL TELLING A PATIENT THAT THEY WERE GOING TO BE ARRESTED.
Q. DO YOU KNOW OF ANY PROCEDURE IN PLACE FOR ANYONE ELSE TO NOTIFY A PATIENT THAT THEY WERE GOING TO BE ARRESTED BEFORE IT ACTUALLY HAPPENED?
A. I DON'T KNOW OF ANY PROCEDURE AND I DON'T RECALL. I

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**[SHIRLEY BROWN 102]**

POSITIVE DRUG SCREENS THEY HAD, WOULDN'T YOU?
A. I THINK SO.
Q. YOU THINK SO OR YOU KNOW SO, MS. BROWN?
A. IT'S BEEN SO LONG, YOU KNOW, I CAN'T REMEMBER THE QUESTIONS THAT THEY ASKED.
Q. WHO ASKED?
A. THE POLICE.
Q. WELL, VOLUME 2, PAGE 349, LINE 23. LINE 25. LET ME SHOW YOU THE DEPOSITION YOU GAVE THURSDAY SEPTEMBER 28, 1995, LESS THAN A YEAR AGO, AT 9:30 IN THE MORNING. DO YOU RECALL GIVING THAT DEPOSITION?
A. YES, I DO.
Q. AND DO YOU RECALL THAT YOU WERE PLACED UNDER OATH BEFORE YOU GAVE THE DEPOSITION?
A. THAT IS CORRECT.
Q. SAME AS YOU ARE IN THE COURT ROOM HERE?
A. THAT IS CORRECT.

Q. AND LET ME SHOW YOU PAGE 349. AND I'M GOING TO START READING THE QUESTION TO YOU, MS. BROWN, BEGINNING AT LINE 22. "WOULD YOU REPORT TO THEM THAT THIS PATIENT HAD, LET'S SAY A PATIENT WHO HAD THREE POSITIVE DRUG SCREENS AND YOU KNEW THAT?"

WOULD YOU READ TO THE JURY, PLEASE, WHAT YOUR ANSWER WAS IN SEPTEMBER OF 1995.

A. "I WOULD REPORT NUMBER OF POSITIVE DRUG SCREENS."

**[SHIRLEY BROWN 103]**

Q. OKAY. NOW, DID ANY PATIENT EVER GIVE YOU PERMISSION OR AUTHORIZATION OR CONSENT TO REPORT TO THE POLICE OR TO ANYONE ELSE THAT A NUMBER OF TIMES THEY TESTED POSITIVE FOR DRUGS?

A. NO, SHE DID NOT.

Q. BUT IS IT YOUR POSITION THAT THE GENERAL COUNSEL FOR MUSC ADVISED YOU AND AUTHORIZED YOU TO REPORT THAT INFORMATION WITHOUT THE PATIENT'S AUTHORIZATION, CONSENT?

A. I WAS TOLD UNDER THE STATUTES FOR CHILD ABUSE AND NEGLECT THAT WE WERE TO REPORT.

Q. THE NUMBER OF POSITIVE SCREENINGS, MS. BROWN, THAT'S WHAT MR. GOOD THE GENERAL COUNSEL TOLD YOU?

A. THE REASON FOR THE SUSPECTED CHILD ABUSE AND NEGLECT.

MY QUESTION WAS: DID MR. GOOD, GENERAL COUNSEL FOR THE HOSPITAL, TELL YOU TO REPORT TO THE POLICE THE NUMBER OF POSITIVE DRUG SCREENS?
A. I WAS TO REPORT THE POSITIVE URINE DRUG SCREENS. I DO NOT REMEMBER HIM SAYING STATE THE NUMBER. HE SAID THAT I HAD TO REPORT THE POSITIVE DRUG SCREENS.
Q. IN ADDITION TO THE NUMBER OF POSITIVE DRUG SCREENS, YOU WOULD TELL DETECTIVE WARING OTHER THINGS ABOUT THE PATIENT, WOULDN'T YOU?
A. THAT IS CORRECT.
Q. YOU WOULD TELL DETECTIVE WARING ABOUT YOUR PATIENT'S ADDRESS?
A. THAT IS CORRECT.

**[SHIRLEY BROWN 104]**

Q. DATE OF BIRTH?
A. THAT IS CORRECT.
Q. WHAT DID DATE OF BIRTH HAVE TO DO WITH FETAL PROTECTION OR CARE AND TREATMENT OF A MOTHER OR CHILD ABUSE?
A. I HAVE NO IDEA.
Q. YOU ALSO TOLD DETECTIVE WARING THE SOCIAL SECURITY NUMBER, DIDN'T YOU?
A. THAT IS CORRECT.
Q. WHAT DID THE PATIENT'S SOCIAL SECURITY NUMBER HAVE TO DO WITH FETAL PROTECTION, CARE AND TREATMENT OF THE MOTHER,

TREATMENT FOR SUBSTANCE ABUSE OR CHILD ABUSE?
A. I WAS INSTRUCTED BY LEGAL COUNSEL TO GIVE IDENTIFYING NAME AS WELL AS SOCIAL SECURITY NUMBER. SOME PEOPLE USED MULTIPLE NAMES.
Q. IN FACT - OKAY. WHAT DOES THE USE OF MULTIPLE NAMES HAVE TO DO WITH SUBSTANCE ABUSE, FETAL PROTECTION AND CHILD ABUSE?
A. I DON'T KNOW. I GAVE THE INFORMATION I WAS SUPPOSED TO GIVE.
Q. IN FACT, WHAT HAPPENED WAS, THE CHARLESTON CITY POLICE DEPARTMENT, CAPTAIN ROBERTS, DETECTIVE WARING SAID THESE THINGS WOULD BE REAL HELPFUL TO US, WE'RE GOING TO DEVELOP A LITTLE FORUM AND IF YOU COULD HAVE THIS INFORMATION READY FOR US WHEN WE CALL, WE'LL BE GRATEFUL TO YOU OR SOMETHING LIKE THAT, ISN'T THAT THE WAY IT HAPPENED? AND THEN YOU - LET ME

**[SHIRLEY BROWN 105]**

STOP THERE. ISN'T THAT THE WAY IT HAPPENED?
A. I WAS GIVEN THE INFORMATION THAT I WAS SUPPOSED TO GIVE.
Q. ISN'T THAT THE WAY IT HAPPENED, YOU GOT THAT INFORMATION AS TO WHAT WOULD BE HELPFUL FROM THE CHARLESTON POLICE DEPARTMENT?

A. THEY DID NOT GIVE ME A FORM, THEY SAID WE NEED THE FOLLOWING INFORMATION.
Q. YES.
A. BUT NO MEDICAL RECORDS WERE RELEASED TO THE CHARLESTON POLICE DEPARTMENT.
Q. MS. BROWN, I DIDN'T ASK YOU WHETHER MEDICAL RECORDS WERE. THAT REQUEST FOR THAT INFORMATION CAME FROM THE POLICE, IT WASN'T BECAUSE MR. GOOD TOLD YOU HAD TO GIVE THIS, IT WAS BECAUSE THE POLICE SAID WE WOULD LIKE TO HAVE THAT, FAIR?
A. FAIR.
Q. WOULD YOU EXPLAIN TO ME WHY YOU TOLD US THEN, WITHIN THE LAST THREE MINUTES, IT WAS BECAUSE MR. GOOD TOLD YOU TO DO IT?
A. I DIDN'T RELEASE ANY INFORMATION TO ANYONE WITHOUT FIRST DISCUSSING IT WITH THE LEGAL COUNSEL AT THE MEDICAL UNIVERSITY.
Q. WITH EACH OF THE PATIENTS WHO WERE ARRESTED, YOU INDICATED THAT YOU DIDN'T TELL THEM WHETHER THEY WOULD BE ARRESTED. DID YOU TELL THEM THAT YOU WERE NOTIFYING THE SOLICITOR'S OFFICE AND/OR THE POLICE ABOUT THEIR COCAINE USE WHILE PREGNANT? DID YOU TELL THEM THAT BEFORE YOU NOTIFIED

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EMPLOYEE OF THE SOLICITOR'S OFFICE, FAIR?
A. I THINK THE SOLICITOR'S OFFICE TRACKING STOPPED BEFORE THE SCAN MEETING STOPPED.
Q. ALL RIGHT. BUT AT SOME POINT IN TIME THE SOLICITOR'S OFFICE WAS TRACKING THE PROGRESS OF THE SUBSTANCE ABUSING PREGNANT WOMEN, FAIR?
A. THAT IS CORRECT.
Q. AT THE HOSPITAL, RIGHT?
A. THAT IS CORRECT.
Q. WITH THE HOSPITAL RECORDS AND DOCUMENTS?
A. ONLY WITH THE SOLICITOR'S LETTER AND THE ROLODEX LITTLE SHEET AND STUFF KEPT IN MY OFFICE, NOT THE ACTUAL HOSPITAL RECORD.
Q. SPEAKING OF THE ROLODEX, MS. BROWN, LET ME SHOW YOU WHAT HAS BEEN MARKED EXHIBIT 180-A AND ASK YOU, MA'AM, WHETHER THIS IS A PHOTOSTATIC COPY, ALBEIT POOR, OF THE CONTENTS OF THE ROLODEX THAT EXISTED ON YOUR DESK AT MUSC FROM THE PERIOD '89 TO '90, '91, '92?
A. THIS LOOKS LIKE MY ROLODEX, XEROXED COPIES.
Q. AND THE WAY I GOT THAT WAS THAT YOU PROVIDED IT TO YOUR LAWYERS TO GIVE TO ME?
A. THAT IS CORRECT.
MR. WHERRY: YOUR HONOR, AT THIS POINT I WOULD MOVE INTO EVIDENCE EXHIBIT 180-A.

MR. HOOD: WE HAVE NO OBJECTION AS TO THE TEN

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**[SHIRLEY BROWN 112]**

SUSTAIN IT. HE DIDN'T OBJECT TO THE OTHER.

MR. WHERRY: I UNDERSTAND.

THE COURT: THAT INVOLVING THE PLAINTIFFS IS ADMITTED WITHOUT OBJECTION.

MR. WHERRY: THANK YOU, SIR.

Q. (BY MR. WHERRY, CONTINUING) MS. BROWN, IN THE COURSE OF BEING THE MANAGER OF THIS POLICY INSOFAR AS IT AFFECTED THE OB-GYN DEPARTMENT, DID YOU EVER MAKE DECISIONS - DID YOU EVER MAKE DECISIONS ABOUT THE DISCHARGE OF THE INFANT THAT WAS BORN?

A. THE NEONATOLOGIST MADE THE DECISION ON THE DISCHARGE OF THE INFANT. THEY MIGHT WAIT UNTIL I OR THE SOCIAL WORKER HAD HEARD FROM DSS, ETCETERA, BEFORE THEY WROTE THEIR FORMAL DISCHARGE.

Q. SO YOU WOULD HAVE INPUT ON WHETHER A BABY GOT TO LEAVE THE HOSPITAL, FAIR?

A. THE WAY IT WAS EXPLAINED TO ME BY LEGAL COUNSEL, THAT DSS HAS 48 HOURS ONCE THEY HAVE BEEN NOTIFIED ABOUT A CASE OF ABUSE OR NEGLECT. AND THAT ONCE WE HAVE MADE THAT REPORT TO

THE DEPARTMENT OF SOCIAL SERVICES, THAT WE HAVE TO KEEP THE BABY AT THE HOSPITAL UNTIL DSS GIVES US PERMISSION THAT THE CASE IS EITHER INDICATED OR IT ISN'T. AND DSS WOULD EITHER CALL ME OR THE SOCIAL WORKER OR WHOEVER WAS COVERING FOR ONE OF US, TO STATE WHETHER THE CASE WAS INDICATED OR NOT INDICATED.

**[SHIRLEY BROWN 113]**

Q. BUT IT WAS YOU WHO WOULD MAKE THAT DECISION NOT MR. GOOD, THE GENERAL COUNSEL FOR THE HOSPITAL, RIGHT?

A. MAKE THE DECISION ABOUT CALLING DSS?

Q. YEAH. AND NOT DISCHARGE THE BABY FOR 48 HOURS, MR. GOOD WOULDN'T MAKE THAT DECISION, YOU WOULD MAKE IT, FAIR?

A. I WOULD WAIT UNTIL WE HEARD FROM DSS, THAT IS CORRECT.

Q. IT WAS NOT MR. GOOD THAT WAS DOING THAT, IT WAS YOU WHO WAS DOING THAT?

A. BUT IT WAS MR. GOOD WHO EXPLAINED THE LAW TO ME AS TO WHAT THE HOSPITAL WAS REQUIRED TO DO IN RELATION TO NOT DISCHARGING THE BABY WHERE THERE WAS A POTENTIAL HARM THAT COULD OCCUR.

Q. DO YOU KNOW DR. TRIBBLE?

A. YES, I DO.

is Q. DR. TRIBBLE, IN THIS OPERATIVE TIME PERIOD, WAS EMPLOYED
16 BY THE HOSPITAL?
17 A. AS A FELLOW.
18 Q. AS ANYTHING. THE ANSWER, I TAKE IT, TO THE QUESTION IS
19 YES?
20 A. YES.
21 Q. TRIBBLE WAS A MEDICAL DOCTOR?
22 A. SPECIALIZING AS A NEONATOLOGIST.
23 Q. DR. TRIBBLE WAS A MEDICAL DOCTOR?
24 A. THAT'S RIGHT.
25 Q. DR. TRIBBLE HAD PRIVILEGES AT MUSC?

* * *

**[SHIRLEY BROWN 125]**

1 MR. WHERRY: IN MY OPINION, THE ANSWER IS YES. I
2 HAVE BEEN ON THE FACULTY.
3 THE COURT: YOU SHOW ME SOME RULE OR REGULATION THAT
4 SETS THAT FORTH, AND I'LL BE GLAD TO CHANGE MY OPINION ABOUT
5 IT. LET'S GO ON TO SOMETHING ELSE.
6 MR. WHERRY: YES, SIR.
7 Q. (BY MR. WHERRY, CONTINUING) YOU AGREE WITH ME, MS.
8 BROWN, THAT A COCAINE BABY, A BABY WHO WAS BORN BY A
9 SUBSTANCE ABUSING MOTHER, LOOKS NO DIFFERENT FROM AN ORDINARY
10 BABY?
11 A. THAT'S CORRECT.
12 Q. NOW, MS. BROWN, THE ONLY WAY TO DETERMINE FROM THE BABY

WHETHER THERE HAS BEEN COCAINE ABUSE IS BY THE URINE DRUG SCREEN; IS THAT RIGHT?
A. THAT IS CORRECT.
Q. AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA, PURSUANT TO THE INTERAGENCY POLICY, WERE MOTHERS OF THE CHILDREN THAT WERE TESTED ASKED FOR OR DID THEY GIVE PERMISSION TO DO URINE DRUG SCREENS ON THEIR CHILDREN?
A. ON THE BACK OF THE CONSENT FORM THAT THEY SIGNED FOR GIVING US PERMISSION TO GIVE CARE TO THE CHILD, IT STATES THAT WE CAN DO A URINE, DRUG SCREEN IF DEEMED NECESSARY BY THE PHYSICIAN.
Q. DOES IT SAY IN THAT CONSENT THAT YOU CAN DISCLOSE THE RESULTS OF IT TO THE POLICE?

**[SHIRLEY BROWN 126]**

A. NO, IT DOES NOT.
Q. IN FACT, THE CONSENTS THAT THEY SIGNED FOR TREATMENT OF THEM DOESN'T SAY THAT THE RESULTS OF WHATEVER TESTS YOU DO ON THEM WILL BE DISCLOSED TO THE POLICE, EITHER, DOES IT?
A. NO, IT DOESN'T.
Q. WERE THERE MONTHLY REPORTS DONE AT THE HOSPITAL OF WOMEN SUSPECTED OF SUBSTANCE ABUSE?
A. COULD YOU EXPLAIN MONTHLY REPORTS? I'M -
Q. SURE. YOU SAID THAT YOU HAD THIS SCAN COMMITTEE THAT MET

ONCE A MONTH; ISN'T THAT'S RIGHT?
A. YES.
Q. WAS THERE A REPORT THAT WAS GIVEN TO THAT SCAN COMMITTEE? WAS ALL OF THIS STUFF PUT TOGETHER IN A DOCUMENT FOR PRESENTATION TO THEM?
A. YES, IT WAS, BUT IT INCLUDED CHILDREN WHO HAD BEEN RAPED, BURNED, ANY TYPE OF ABUSE.
Q. AND IT DEALT WITH BOTH THE MOTHERS AND THE CHILDREN?
A. IT GAVE THE INFORMATION ON THE CHILDREN.
Q. THIS DOCUMENT, THIS SCAN REPORT, WENT TO, I TAKE IT, ALL OF THE MEMBERS OF THE SCAN COMMITTEE?
A. I'M ASSUMING. I WASN'T RESPONSIBLE FOR MAILING IT OUT.
Q. DID YOU GET A COPY OF IT EACH MONTH?
A. I GOT A COPY.
Q. WERE YOU ON THE SCAN COMMITTEE?
A. YES, I WAS.

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**[SHIRLEY BROWN 159]**

Q. HEROIN, WE HAVE KNOWN THE HARMFUL SIDE EFFECTS OF HEROIN SINCE THE EARLY SIXTIES, HAVEN'T WE?
A. YES, WE HAVE.
Q. WAS ANYTHING DONE BEFORE THE POLICY WAS STARTED WITH RESPECT TO HEROIN? WAS THERE ANY PROTOCOL FOR THAT?
A. I DO NOT RECALL ANYONE TESTING POSITIVE FOR HEROIN AT

THAT POINT IN TIME.
Q. NOT MY QUESTION. WAS THERE ANY PROTOCOL AT THE HOSPITAL, ANY PLAN, ANYTHING IMPLEMENTED WITH RESPECT TO HEROIN AND FETAL HEALTH?
A. IT WOULD HAVE BEEN REPORTED TO THE DEPARTMENT OF SOCIAL SERVICES.
Q. BUT NOT TO THE POLICE AND NOT TO THE SOLICITOR'S OFFICE?
A. THAT IS CORRECT.
Q. WHAT WAS DIFFERENT ABOUT COCAINE AND WHERE YOU REPORTED IT THAN HEROIN? NOTHING, WAS IT?
A. IT'S MY UNDERSTANDING THAT SOUTH CAROLINA LAW UNDER CHILD ABUSE AND NEGLECT, SAID THAT YOU WERE TO REPORT TO THE POLICE AND DSS.
Q. YES, MA'AM.
A. AND IT WAS DECIDED THAT WE SHOULD REPORT TO BOTH.
Q. WHY?
A. I CAN'T ANSWER THAT QUESTION.
Q. DID YOU HELP THEM MAKE THAT DECISION?
A. NO, I DID NOT. I WAS IN THE MEETINGS WHERE THE HARMFUL

**[SHIRLEY BROWN 160]**

EFFECTS OF COCAINE ABUSE WERE DISCUSSED, BUT THE LAW WAS EXPLAINED TO US BY THE PEOPLE WHO ARE EXPERIENCED IN LEGAL ISSUES.
Q. I'LL MOVE ON.

LET ME SHOW YOU WHAT HAS BEEN MARKED NUMBER 171 FOR IDENTIFICATION. LET ME WITHDRAW THAT FOR A MOMENT. LET ME SHOW YOU WHAT HAS BEEN MARKED 123 FOR IDENTIFICATION AND ASK YOU WHETHER YOU CAN RECOGNIZE THAT AS BEING ONE OF YOUR CHEAT SHEET FORMS?

A. YES, IT IS.

MR. HOOD: IT'S BEEN ASKED AND ANSWERED, YOUR HONOR, ON ALL OF THESE DOCUMENTS. THESE ARE THE SAME ONES THAT WE WENT OVER.

MR. WHERRY: I'M SORRY, I THOUGHT THEY WERE THE ONES THAT I JUST HANDED YOU A MOMENT AGO.

MR. HOOD: YOU HANDED THEM TO ME TWICE.

MR. WHERRY: THAT'S ABSOLUTELY CORRECT.

Q. (BY MR. WHERRY, CONTINUING) ON THAT CHEAT SHEET DOCUMENT ALCOHOL AND TOBACCO ARE LISTED, AREN'T THEY?

A. YES, THEY ARE.

Q. AND THAT'S BECAUSE THEY HAD A POTENTIAL ADVERSE EFFECT ON PREGNANCY AND FETAL HEALTH?

A. THEY CAN LEAD TO SOME PROBLEMS DURING FETAL HEALTH, THAT'S CORRECT.

Q. WITH RESPECT TO THE LIST OF THE IDENTIFYING

CHARACTERISTICS FOR URINE SCREENS, WOULD YOU TELL ME WHY NO PRENATAL CARE WAS IMPORTANT AS AN IDENTIFYING CHARACTER?

A. BECAUSE OF THE LITERATURE WHICH SUGGESTS THAT WOMEN WHO DID NOT SEEK PRENATAL CARE WERE AT RISK FOR COCAINE ABUSE.

Q. WHAT LITERATURE WAS THAT THAT SUGGESTED PEOPLE WHO DIDN'T GET PRENATAL CARE USED COCAINE?

A. SOME OF IT WAS PUBLISHED BY DOCTOR IRA CHASNOFF.

Q. AND IS THAT THE LITERATURE THAT YOU RELIED UPON, THE CHASNOFF LITERATURE TO MAKE THAT ONE OF THE CRITERIAS?

A. I DO NOT RECALL ALL OF THE LITERATURE THAT WAS REVIEWED AT THAT POINT IN TIME.

Q. LATE PRENATAL CARE AFTER 24 WEEKS, CHASNOFF AGAIN?

A. I DON'T RECALL THE REFERENCES ON THAT.

Q. INCOMPLETE PRENATAL CARE. CHASNOFF AGAIN?

A. I DO NOT RECALL THE REFERENCE.

Q. ABRUPTIO PLACENTAE?

A. THAT WAS OUT OF SOME OF DR. CHASNOFF'S WORK.

Q. INTRAUTERINE FETAL DEATH, CHASNOFF? THE BABY DIED IN UTERO WAS CAUSED BY COCAINE?

A. I CAN'T REMEMBER WHOSE ARTICLE THAT WAS FROM.

Q. PRETERM LABOR OF NO OBVIOUS CAUSE?

MR. HOOD: TO PIT A NURSE AGAINST A DOCTOR IN WHAT

HE WROTE IS UNFAIR. PLENTY OF DOCTORS WILL TESTIFY IN THE CASE.

MR. WHERRY: I ASKED WHAT SHE RELIED ON. I WASN'T

**[SHIRLEY BROWN 162]**

ASKING TO ARGUE WITH HER OR DISCUSS THEM OR TALK ABOUT THEM.

THE COURT: GO AHEAD. RELIED ON - SHE RELIED ON WHAT?

MR. WHERRY: IN SELECTING THESE CRITERIA. THAT WAS MY QUESTION.

THE COURT: DID SHE SELECT THEM?

MR. WHERRY: SHE WAS THERE IN THE SELECTION OF THEM.

MR. HOOD: SHE DIDN'T WRITE THE POLICY, SHE TESTIFIED TO THAT.

THE COURT: GO AHEAD. IT'S NOT A MATTER OF PITTING. I'LL PERMIT THE QUESTIONING. GO AHEAD.

Q. (BY MR. WHERRY, CONTINUING) LET ME CLEAR THAT UP. WHO WROTE THE POLICY? WHO PUT PEN TO PAPER AND WROTE THE POLICY?

A. IT WAS A - PEOPLE FROM THE DEPARTMENT OF OB, IT WAS PEOPLE FROM THE NEONATOLOGY, IT WAS PEOPLE FROM THE LEGAL OFFICE AT THE MEDICAL UNIVERSITY. IT WAS - IT WAS INPUT FROM DSS AND INPUT FROM CHARLESTON COUNTY SUBSTANCE ABUSE AND INPUT FROM THE SOLICITOR'S OFFICE.

Q. SO, NO ONE PERSON WROTE THE POLICY, FAIR?
A. THAT IS CORRECT.
Q. SO THERE WILL NEVER BE A WITNESS ON THIS WITNESS STAND WHO WILL SAY I WROTE THE POLICY?
A. I DON'T THINK SO.
Q. AND YOU WERE ONE OF THE PEOPLE WHO CONTRIBUTED TO FORMULATING THE POLICY?

**[SHIRLEY BROWN 163]**

A. I WAS ONE OF THE PEOPLE IN THE MEETINGS, YES, I WAS.
Q. WOULD IT BE FAIR TO SAY THAT YOU WERE ONE OF THE PEOPLE WHO WROTE THE POLICY INSOFAR AS NO ONE PERSON DID?
A. THAT'S CORRECT.
Q. PREVIOUSLY KNOWN DRUG AND ALCOHOL USE. CHASNOFF AGAIN?
A. I DON'T REMEMBER WHOSE, YOU KNOW, THE ALCOHOL AND DRUG ABUSE IS THROUGHOUT ALL OF THE LITERATURE RELATING TO CHILD ABUSE.
Q. SURE. CHILD ABUSE OR FETAL HEALTH, OR IS THERE NO DIFFERENCE?
A. I THINK THAT IT GETS TO BE A BUNCH OF SEMANTICS WHEN YOU TALK ABOUT THAT. I DON'T NORMALLY GO INTO A WOMEN AND SAY YOUR FETUS IS GETTING DAMAGED. I USUALLY SAY YOUR CHILD. IT TECHNICALLY IS NOT A CHILD UNTIL IT'S BORN, BUT YET THE STATE

OF SOUTH CAROLINA HAS RULED THAT IT IS A PERSON WITH RIGHTS AFTER 25 WEEKS.

Q. PRIOR TO THE ADOPTION OF THE POLICY, WHAT COUNSELING, WHAT REFERRALS FOR THERAPY WERE BEING DONE AND GIVEN BY YOUR UNIT AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA?

A. WHENEVER SOMEONE TESTED POSITIVE FOR DRUGS THEY WERE TALKED TO, COUNSELED, EDUCATED ABOUT THE HARMFUL EFFECTS OF DRUGS ON THEM AND THEIR UNBORN CHILD, OR THEIR CHILD IF IT HAD ALREADY BEEN BORN, AND A REFERRAL WAS MADE TO THE DEPARTMENT OF SOCIAL SERVICES WHEN THE CHILD WAS BORN.

MR. WHERRY: MAY I JUST A MOMENT, PLEASE, YOUR

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

**EXCERPTS FROM TESTIMONY OF SHIRLEY BROWN 11/22/96**

**[BROWN 171]**

Q. OKAY. AND HOW LONG HAVE YOU WORKED AT THE MEDICAL UNIVERSITY HERE IN CHARLESTON?
A. I BEGAN WORKING AT THE MEDICAL UNIVERSITY IN 1985.
Q. SO ABOUT ELEVEN YEARS?
A. THAT'S CORRECT.
Q. AND WHAT DEPARTMENT DID YOU - DO YOU WORK IN OR HAVE WORKED IN?
A. I WORK FOR CLINICAL SERVICES THAT IS THE NURSING DEPARTMENT AT THE MEDICAL UNIVERSITY. PRIOR TO THAT I WAS ON FACULTY AT THE COLLEGE OF NURSING.
Q. AND WHAT ARE YOUR DUTIES AND RESPONSIBILITIES, PARTICULARLY AT THE TIME THAT WE'RE TALKING ABOUT IN '89, '90, '91, '92?
A. I WAS A CASE MANAGER FOR HIGH-RISK OBSTETRICS.
Q. AND WHAT DOES A CASE MANAGER FOR HIGH-RISK OBSTETRICS MEAN?
A. IT MEANS THAT PHYSICIANS, NURSING STAFF -
THE COURT: EXCUSE ME, SIR, CAN YOU SEE THE

WITNESS?
I DON'T KNOW HOW THAT TELEVISION GOT OUT THERE, BUT IT JUST OCCURRED TO ME IT WAS BETWEEN YOU AND THE JURY.
GOOD.
MR. HOOD: THANK YOU, YOUR HONOR.
Q. (BY MR. HOOD, CONTINUING) I CAN'T GET BACK THERE WHERE I WOULD LIKE TO BE, AND I DIDN'T REALIZE THE TV PROBLEM. GO

**[BROWN 172]**

AHEAD YOU WERE TELLING US WHAT YOU DO.
A. AS A CASE MANAGER AT THE MEDICAL UNIVERSITY AND NURSING STAFF, SOCIAL WORK STAFF, RESIDENTS, PHYSICIANS, DIETICIANS, ANYONE THAT WAS INVOLVED IN THE CARE OF THE PATIENT IN THE CLINIC OR IN THE HOSPITAL COULD CONSULT ME TO SEE THIS PATIENT TO LOOK AT WHAT THE PATIENT'S OVERALL NEEDS WERE, TO MAKE SURE THAT ALL OF THE RESOURCES THAT THE PATIENT NEEDED WERE IN PLACE. I COULD GET CALLED BECAUSE A PATIENT WAS HAVING PROBLEMS WITH THEIR FUNDING OR ETCETERA. AND I WOULD MAKE AN ASSESSMENT, MAKE A REFERRAL TO THE SOCIAL WORKER TO MAKE SURE THAT THE PATIENTS HAD THEIR WIC, FOOD STAMPS. SOME OF THE

PATIENTS DIDN'T HAVE HOMES, TO TRY TO GET THEM IN APPROPRIATE SHELTERS. I WOULD DO COUNSELING AFTER SOMEONE'S BABY HAD DIED, MAKE SURE THAT THEY GOT PUT IN THE PROPER FOLLOW-UP FOR THAT. PATIENTS WERE GIVEN MY CARD AND THEY COULD CALL ME AFTER THEY WERE DISCHARGED FROM THE HOSPITAL. IF THEY NEEDED SOMEONE TO TALK TO, I.E., ABOUT THEIR BABY DYING OR THEY WERE HAVING PRETERM LABOR AND ANY MEDICAL PROBLEM, I WAS KIND OF THE COORDINATOR. I WORE A LOT OF HATS AND I MIGHT NOT ALWAYS FIX THE PROBLEM, BUT I WOULD REFER THEM TO THE PEOPLE WHO WERE SUPPOSED TO BE ABLE TO HELP THEM.

Q. OKAY. NOW, WE TALKED ABOUT YESTERDAY THE POLICY THAT THIS LAWSUIT IS ABOUT. DID YOU WRITE THE POLICY?

A. NO, I DID NOT.

Q. DID YOU LIST - COME UP WITH A LIST OF THE MEDICAL

**[BROWN 173]**

CRITERIA BY WHICH WOMEN COME UNDERNEATH THE POLICY?

A. NO, I DID NOT.

Q. DID YOU - DID YOU - WELL, JUST EXPLAIN THEN WHAT YOUR ROLE WAS IN ADDITION TO THESE OTHERS JOBS YOU HAVE JUST DESCRIBED WITH REGARD TO THIS PARTICULAR SUBJECT, THE POLICY

AND DEALING WITH MOTHERS THAT USED COCAINE WHILE THEY WERE PREGNANT?

A. I ATTENDED THE INITIAL MEETING AS THE CASE MANAGER FOR OBSTETRICS AT THE MEDICAL UNIVERSITY WITH THE SOLICITOR'S OFFICE, THE POLICE, DSS, CHARLESTON COUNTY SUBSTANCE ABUSE, AND OTHER OFFICIALS FROM THE MEDICAL UNIVERSITY. AND I WAS AT SUBSEQUENT MEETINGS AS THE POLICY WAS DEVELOPED. IT WAS MY ROLE WHEN A PERSON TESTED POSITIVE TO COORDINATE ALL OF THEIR REFERRALS.

Q. OKAY. LET'S GO THROUGH THE STEPS OF THE POLICY, IF WE CAN. COME DOWN, MS. BROWN.

DEPUTY CLERK: DEFENDANT'S EXHIBIT 156.

Q. (BY MR. HOOD, CONTINUING) I JUST WANT THE JURY TO UNDERSTAND THIS POLICY I JUST WANT TO UNDERSTAND THE STEPS BY WHICH THE POLICY WAS UNDERTAKEN, OKAY? SO, LET'S WALK THROUGH IT POINT BY POINT. THE FIRST THING THAT WE HAVE ON HERE IS GENERAL CONSENT FORM SIGNED AT ADMISSION. WE HEARD FROM TWO PLAINTIFFS AND PUT INTO EVIDENCE TWO CONSENT FORMS. WHAT DOES THAT GIVE THE HEALTH CARE PROVIDERS A RIGHT TO DO AT THE MEDICAL UNIVERSITY?

MR. WHERRY: OBJECTION AS TO COMPETENCE.
THE COURT: THE OBJECTION IS SUSTAINED.
MR. WHERRY: THANK YOU, SIR.
THE COURT: THE DOCUMENT SPEAKS FOR ITSELF. YOU'RE WELCOME TO PUBLISH IT, BUT -
MR. HOOD: YES, SIR.
Q. (BY MR. HOOD, CONTINUING) WE HAVE DIFFERENT CONSENT FORMS HERE. JUST EXPLAIN TO THE JURY WHAT THE CONSENT FORM SAYS.
THE COURT: NO. I SUSTAIN THE OBJECTION. SHE CANNOT EXPLAIN IT. IT SPEAKS FOR ITSELF. SHE CAN READ IT.
MR. HOOD: I JUST ASKED HER TO. I'M SORRY.
THE COURT: YOU ASKED HER TO EXPLAIN IT.
MR. HOOD: JUST READ THE WORDS, PLEASE. I'M SORRY.
MR. WHERRY: YOUR HONOR, MAY I ASK WHAT NUMBER SHE IS READING?
MR. HOOD: THIS IS DEFENDANT'S 13-A. OKAY.
MR. WHERRY: YOUR HONOR, I'M GOING TO OBJECT I DON'T THINK 13-A HAS BEEN RECEIVED INTO EVIDENCE.
Q. (BY MR. HOOD, CONTINUING) THIS IS LORI GRIFFIN'S SIGNED CONSENT FORM PUT IN WITHOUT OBJECTION. I CONSENT TO THE TESTING FOR DRUGS IF DEEMED ADVISABLE AND SO FORTH. AND THEN

GOES ON TO SAY, THAT THEY HAVE MY PERMISSION TO REVEAL INFORMATION TO APPROPRIATE AGENCIES AND INDIVIDUALS WHERE IT BECOMES NECESSARY TO PROTECT THE WELFARE OF MYSELF, THE

**[BROWN 175]**

PATIENT, WHICH I GUESS IN THIS CASE WOULD BE THE CHILD AND OR THE COMMUNITY.

AND ARE SIMILAR FORMS SIGNED BY EACH PATIENT AS THE FIRST STEP OF COMING INTO THE MEDICAL UNIVERSITY?

A. THE ONE YOU READ IS THE CONSENT IF THEY COME IN FOR PRENATAL CARE.

Q. OKAY. AND THIS ONE, 106 IS A LONGER FORM AND HERE IT SAYS: I FURTHER CONSENT TO THE TESTING FOR INFECTIOUS DISEASES SUCH AS, AND IT LISTS THEM. AND I FURTHER CONSENT TO TESTING OF DRUGS IF DEEMED ADVISABLE BY MY PHYSICIAN.

AND WHEN IS THIS CONSENT FORM OBTAINED?

A. WHEN THEY COME INTO THE HOSPITAL FOR ANY DELIVERY OR ANY MEDICAL CARE.

Q. WE HAVE TWO FORMS, A LONG ONE FOR DELIVERY AND A SHORTER ONE YOU SAID THAT'S FOR PRENATAL CARE?

A. YES.

Q. GENERAL CONSENT FORM IS NUMBER 1. NOW THESE WOMEN, THE

TWO THAT HAVE TESTIFIED SO FAR, ARE THEY GIVEN THE MEDICAL UNIVERSITY PAMPHLET WHEN THEY COME IN?

A. THE MEDICAL UNIVERSITY PAMPHLET IS GIVEN AS YOU COME THROUGH THE ADMITTING OFFICE. THE OB PATIENT COMES DIRECTLY TO THAT UNIT SO THEY'RE NOT GIVEN THAT PAMPHLET UPON ADMISSION TO THE HOSPITAL.

Q. OKAY. NOW THE NEXT ITEM HERE IS A VIDEO IS VIEWED AND A LETTER IS SIGNED; IS THAT CORRECT?

* * *

**[BROWN 194]**

THERE MAY BE SOME DISAGREEMENT, AND I'M SURE THERE WILL BE DISAGREEMENT AS TO WHETHER THE STATEMENTS MADE THEREIN, FOR INSTANCE ABOUT THE HARM OF COCAINE, OR THE HARM OF CIGARETTES OR THE HARM OF ALCOHOL, OR THE EXTENT OF HARM OF ANY OF THOSE TO UNBORN BABIES, THERE MAY BE DEBATES ABOUT THAT. AND THEY WILL HAVE TO COME FROM THE WITNESS STAND, BECAUSE THIS TAPE YOU CANNOT CONSIDER FOR THE TRUTH OF ANY OF THOSE STATEMENTS, ONLY FOR THE FACT THAT THESE STATEMENTS WERE SHOWN TO CERTAIN PEOPLE AND ONLY TO THOSE PEOPLE WHO WILL BE IDENTIFIED AT SOME POINT IN TIME I'M SURE AS HAVING SEEN THEM.

HOPE YOU UNDERSTAND THAT. OKAY. GO AHEAD.
MR. HOOD: I'LL NOW SHOW THE VIDEOTAPE THAT MS. BROWN JUST IDENTIFIED THE SECOND STAGE OF THE POLICY.
(VIDEO TAPE PUBLISHED TO JURY.)
Q. (BY MR. HOOD, CONTINUING) MS. BROWN, AFTER THE VIDEO WAS SHOWN, IF A PATIENT MEETS THE MEDICAL CRITERIA UNDER THE POLICY, THE THINGS THAT WE JUST HEARD ABOUT, ABRUPTIO PLACENTAE AND THE DIFFERENT MEDICAL THINGS THAT CAN HAPPEN, THE NEXT ITEM IS A URINE DRUG SCENE IS PERFORMED. WHAT IS THAT?
A. THAT'S WHEN A URINE SAMPLE IS SENT TO THE LAB TO BE ANALYZED FOR COCAINE AND VARIOUS OTHER DRUGS.
Q. OKAY. AND IF THE URINE DRUG SCREEN COMES BACK POSITIVE INDICATING THE MOTHER HAS USED COCAINE, THE NEXT STEP IS TO SHOW THE VIDEO THAT WE HAVE JUST SEEN.

**[BROWN 195]**

MR. HOOD: AND I WOULD LIKE TO MARK IT AS AN EXHIBIT, PREMARKED IT AS DEFENDANT'S EXHIBIT 149.
Q. (BY MR. HOOD, CONTINUING) THEY'RE SHOWN THE VIDEO

AGAIN. AND THEN THEY MEET WITH THE OB CASE MANAGER. WHO IS THAT?

A. I WAS ONE OF THE OB CASE MANAGERS.

Q. OKAY. AND THEN THERE ARE A LIST OF FIVE THINGS THAT YOU AND THE OTHER CASE MANAGERS WERE TO DISCUSS. COME DOWN AND READ THESE AND EXPLAIN THEM TO THE JURY, PLEASE.

A. COMBINATION OF TAKING A HISTORY.

THE COURT: MS. BROWN, I'M GOING TO ASK YOU TO EXCHANGE SIDES WITH MR. HOOD. IT MAKES IT A LOT EASIER FOR HER TO TAKE IT DOWN.

THE WITNESS: OKAY.

A. A HISTORY WOULD BE TAKEN FROM THE PATIENT. FURTHER DISCUSS AND SEE WHAT TYPE QUESTIONS THEY HAD OF HARMFUL EFFECTS OF COCAINE OR ANY OTHER DRUGS THAT THEY ADMITTED TO USING COULD HAVE ON THEM. IT WAS AN EDUCATIONAL-TYPE THING. AT THAT POINT IN TIME WOULD TALK ABOUT THEM GOING INTO TREATMENT. DEPENDING ON WHEN IT WAS AND THE POLICY, THE VARIOUS OPTIONS EACH YEAR, MORE OPTIONS FOR PEOPLE OPENED UP. EXPLAIN THE REQUIREMENT TO REPORT THE URINE DRUG SCREEN AND OFFER AMNESTY BY THE SOLICITOR. THE SOLICITOR'S LETTER WAS REVIEWED AND SIGNED. IN READING THAT LETTER, EACH SENTENCE

WAS READ AND ASKED IF THEY HAD ANY QUESTIONS ABOUT THAT.

**[BROWN 196]**

THERE WAS A WITNESS IN THE ROOM WHEN THIS LETTER WAS READ.

Q. LET'S STOP RIGHT THERE. I FAILED TO ASK YOU ABOUT JOINT EXHIBIT 8. EXPLAIN TO THE JURY WHAT THAT LETTER IS, PLEASE.

A. WHENEVER A PERSON WAS SEEN IN THE CLINIC, THEY WOULD GO - AND THIS WAS PART OF DOCUMENTING THEIR EDUCATION, THE NURSES IN THE CLINIC WERE RESPONSIBLE FOR SHOWING THIS VIDEO. AND IF IT WAS THE FIRST TIME -

MR. WHERRY: OBJECTION, YOUR HONOR, HEARSAY. SHE IS TALKING ABOUT WHAT SOMEONE ELSE DID WHEN SHE WASN'T THERE OR SOMEONE ELSE TOLD THE PATIENTS WHEN SHE WASN'T THERE. THAT'S HEARSAY.

THE COURT: I THINK IT'S HEARSAY.

Q. (BY MR. HOOD, CONTINUING) EXPLAIN.

MR. HOOD: THIS IS A JOINT EXHIBIT. I'LL PUBLISH IT, YOUR HONOR.

Q. (BY MR. HOOD, CONTINUING) "I HAVE SEEN A VIDEO ON SUBSTANCE ABUSE AND HAVE BEEN ADVISED OF THE RISKS TO MYSELF AND MY BABY. I UNDERSTAND THAT THE MEDICAL UNIVERSITY,

MEDICAL CENTER STAFF IS WILLING TO ASSIST ME IN OBTAINING ASSISTANCE FOR DRUG ABUSE TREATMENT."

AND THE PATIENT SIGNED IT?

A. THAT'S CORRECT.

Q. ALL RIGHT. SO WE STARTED WITH THE CONSENT FORM AND THERE WERE TWO OF THOSE THAT YOU EXCHANGED. PRENATAL IN THE HOSPITAL. CONSENT FORM, I BLEW UP THE LANGUAGE OF IT. AND IT

**[BROWN 197]**

SAYS, JUST TO REITERATE, THAT THEY ACKNOWLEDGE SO FORTH AND CONSENT TO THE TESTING OF DRUGS IF DEEMED ADVISABLE BY MY PHYSICIAN.

THEN THE NEXT JOINT EXHIBIT THAT'S AGREED TO IS NUMBER 9. WHAT IS THIS DOCUMENT?

A. THAT'S AN APPOINTMENT LETTER.

Q. NOW, WHEN IN THE PROCESS OF THIS POLICY WAS THE APPOINTMENT DONE?

A. OKAY. WHEN YOU TOOK THE HISTORY AND THE PATIENT SAID WHAT TYPE OF TREATMENT THEY WANTED, THEN THE PERSON WHO WAS TAKING THE HISTORY, WHETHER IT WAS ME OR ONE OF THE PEOPLE, OTHER DESIGNEES WOULD GO AND CALL WHICHEVER FACILITY THIS PATIENT WAS TO GO INTO TREATMENT FOR, MAKE AN APPOINTMENT. IT WOULD BE PUT ON THAT, THE UNIT SECRETARY WOULD CALL AND MAKE

THE APPOINTMENT FOR PRENATAL CARE IF THEY WERE STILL PREGNANT.
Q. SO EXHIBIT 9 IS A WRITTEN APPOINTMENT WITH A PRENATAL CLINIC AT A CERTAIN TIME AND PLACE FOR SUBSTANCE ABUSE COUNSELING OR TREATMENT?
A. THAT'S CORRECT.
Q. NOW YOU HAVE MENTIONED THE SOLICITOR'S LETTER WHICH OCCURS RIGHT BEFORE THAT. AND I THINK THAT THERE ARE THREE OF THEM IN THE JOINT EXHIBIT. 5, 6 AND 7. WE HAVE A CHANGE IN SOLICITOR'S DURING THE POLICY. MR. CONDON TO MR. SCHWACKE. BASICALLY THE LETTER FROM THE SOLICITOR THE SAME?
A. ONE OF THE LETTERS TALKS ABOUT PRENATAL DRUG USE AND THE

**[BROWN 198]**

OTHER ONE TALKS ABOUT AT DELIVERY. THEY HAD ALREADY DELIVERED.
Q. OKAY. NOW, THEY GET THE SOLICITOR LETTER, GO TO SUBSTANCE ABUSE OR THEY WILL, IT'S UNDERLINED, BE PROSECUTED. GET THE APPOINTMENT. THEN WHAT IS THE NEXT THING?
A. ONE STEP THAT IS LEFT OUT.
Q. PLEASE ADD IT IN. SORRY.
A. IN PART OF REVIEWING THE VIDEO, THEY WERE ALSO, IN ADDITION TO THE LETTER THAT THEY WERE - SIGNED, THEY WERE GIVEN A LETTER FROM THE PHYSICIANS.

Q. OKAY. AND THAT'S JOINT EXHIBIT NUMBER 10. IS THAT SOMETHING THAT YOU PREPARED?
A. NO, I DID NOT.
Q. WHO PREPARED IT?
A. THAT WAS WRITTEN BY THE PHYSICIANS IN OB.
Q. THOSE ARE THE DOCTORS. OKAY. AND THAT'S GIVEN TO THE PATIENT?
A. THAT'S CORRECT.
Q. AND SINCE IT'S IN EVIDENCE, JUST READ THE CRUCIAL PARTS OF THIS, IF YOU CAN.
A. "IF YOU'RE USING DRUGS, PLEASE STOP. IF YOU'RE UNABLE TO STOP, PLEASE LET YOUR DOCTOR KNOW. WE WANT TO HELP MOTHERS GET OFF THE DRUGS FOR THE BENEFIT OF BOTH YOU AND YOUR BABY. WE WILL PROVIDE YOU WITH COUNSELING ABOUT THE HARMFUL EFFECTS OF DRUG ABUSE AND WILL MAKE ARRANGEMENTS FOR YOU TO BE SEEN AT

**[BROWN 199]**

THE SUBSTANCE ABUSE CLINIC. WE REALIZE DRUG ABUSE IS A VERY DIFFICULT PROBLEM AND WE WILL DO ALL WE CAN TO HELP YOU. IF, HOWEVER, WE CONTINUE TO DETECT EVIDENCE OF DRUG ABUSE OR A FAILURE TO FOLLOW RECOMMENDED TREATMENT, WE WILL TAKE ACTION TO PROTECT YOUR UNBORN CHILD. THE CHARLESTON POLICE, THE SOLICITOR'S OFFICE AND PROTECTIVE SERVICE DIVISION OF DSS ARE

ALSO COMMITTED TO THE PROTECTION OF THE UNBORN AND NEWBORN CHILDREN FROM THE HARMS OF ILLEGAL DRUG ABUSE. WE HOPE THAT YOU UNDERSTAND THE TRAGEDY WHICH IS BEING CAUSED BY THE CONTINUED USE OF ILLEGAL DRUGS DURING PREGNANCY. THIS POLICY OF PROVIDING WARNING, COUNSELING AND TREATMENT FOR PREGNANT WOMEN USING ILLEGAL DRUGS IS THE BEST WAY FOR US TO HELP YOU. FOR THOSE OF YOU WHO FAIL THIS TREATMENT, WE MUST ASK HELP TO PROTECT THE LIFE AND HEALTH OF OUR MOST INNOCENT UNBORN CHILDREN."

Q. SO IN THE PROCESS WE START WITH THE VIDEO. BUT WE START WITH THE INFORMED CONSENT, THE VIDEO. AFTER THE VIDEO THE SOLICITOR'S LETTER - NO, THE DOCTOR'S LETTER. AND THEN WE GO TO THE APPOINTMENT, THE SUBSTANCE ABUSE AND THEN THE SOLICITOR'S LETTER; IS THAT-RIGHT?

A. THE ONLY PEOPLE THAT IT WOULD - IF THEY TESTED POSITIVE, THEN IT WOULD GO FROM HERE OVER. FROM THIS EXHIBIT TO OUR PATIENTS OVER TO THIS WAS SOMETHING THAT WAS DONE TO ALL PATIENTS RECEIVING PRENATAL CARE AT THE MEDICAL UNIVERSITY.

Q. OKAY. IN OTHER WORDS, WHETHER THEY WERE A PRIVATE

PATIENT, A PAYING PATIENT, A FREE PATIENT IN THE CLINIC, EVERYONE THAT CAME IN, EVERY PATIENT GOT EXHIBIT 13? EXHIBIT 12?

MR. WHERRY: EXCUSE ME, MR. HOOD, I HAVE TO OBJECT.

THE COURT: YES.

MR. WHERRY: I REALIZE THAT THIS IS TECHNICALLY CROSS-EXAMINATION.

THE COURT: NO, IT'S NOT.

MR. WHERRY: IT'S REALLY DIRECT EXAMINATION.

THE COURT: IT'S NOT TECHNICALLY.

MR. WHERRY: THE QUESTIONS ARE HORRIBLY LEADING.

THE COURT: I SUSTAIN THE OBJECTION. THEY ARE.

Q. (BY MR. HOOD, CONTINUING) WHO GOT EXHIBITS 13, 14 -

THE COURT: NO. NO. YOU CAN'T LEAD. SHE KNOWS WHAT SHE IS TESTIFYING TO.

A. THIS IS A CONSENT FORM THAT YOU SIGNED.

Q. GIVE US THE NUMBERS OF THE EXHIBITS THAT YOU SAID A MOMENT AGO EVERYONE IN PRENATAL GOT, AND THEN THE OTHER EXHIBIT.

A. JOINT EXHIBIT 13 WAS THE CONSENT TO TREATMENT WAS GIVEN PRENATALLY IF THEY WENT THROUGH ANY OF OUR CLINIC AREAS. AND WE CALLED THE CLINICS ANYWHERE A PERSON GOT CARE IF SHE HAD INSURANCE OR DIDN'T.

Q. OKAY.
A. THIS IS A CONSENT FORM THAT YOU SIGNED WHEN YOU CAME INTO

**[BROWN 201]**

THE HOSPITAL.
Q. THAT'S TO DELIVER YOUR BABY?
A. OR FOR ANY TYPE OF COMPLICATION THAT YOU MIGHT HAVE.
Q. OKAY. THAT'S NUMBER?
A. THAT IS NUMBER 12.
Q. OKAY.
A. EVERYONE IN THE PRENATAL CLINIC WAS SHOWN THE VIDEO SMOKING, DRINKING AND DRUGS AND SIGNED A STATEMENT WHICH IS EXHIBIT NUMBER 9, STATING THAT THEY HAD SEEN THE VIDEO.
EXHIBIT NUMBER 10 WAS ALSO A LETTER THAT WAS GIVEN TO PRENATAL PATIENTS. OKAY?
IF A PATIENT MET THE CRITERIA SET FORTH BY THE PHYSICIANS AT THE MEDICAL UNIVERSITY TO BE SCREENED FOR DRUG ABUSE, THEN WHEN THAT SCREEN WAS POSITIVE, THEN THE OB CASE MANAGER, AND I WAS ONE OF THOSE, BUT THERE WERE A NUMBER OF OTHER PEOPLE THAT COULD HAVE BEEN CALLED, INCLUDING THE PCC, AND THAT'S PATIENT CARE COORDINATOR, WHO IS A NURSE WHO IS IN THE HOSPITAL WHEN THE REST OF US GO HOME, WAS CALLED AND SHE WOULD BE THE ONE THAT WOULD DO SOME OF THE REST OF THIS.

OKAY? AFTER WHOEVER TALKED TO THEM ABOUT ALL OF THE HARMFUL EFFECTS OF COCAINE USE, TOOK A BRIEF HISTORY. AND THE REASON FOR THIS HISTORY IS SO THAT IN TALKING WITH THE PHYSICIANS, SOCIAL WORKERS, NURSING, EVERYONE ELSE INVOLVED, ABOUT RISK FACTORS, WHAT OTHER -

THE COURT: MS. BROWN, LET ME STOP YOU. THAT'S NOT

**[BROWN 202]**

RESPONSIVE. WHAT OTHER EXHIBITS DO YOU SAY WERE SHOWN? THE REASON I WANT TO DO THAT, A MOMENT AGO YOU SAID THESE ON THIS SIDE DO SOMETHING AND THE OTHER SIDE DO SOMETHING. THE RECORD NEEDS TO REFLECT WHAT YOU WERE TALKING ABOUT.

THE WITNESS: ALL RIGHT.

A. JOINT EXHIBIT NUMBER 9 IS AN APPOINTMENT LETTER WHEN A PERSON TESTED POSITIVE FOR DRUGS WHERE WE WOULD WRITE ON THERE WERE THEY WOULD GO FOR SUBSTANCE ABUSE COUNSELING. OKAY? THESE WERE ONLY IF YOU TESTED POSITIVE AND THERE WAS ALSO AN APPOINTMENT MADE FOR PRENATAL CARE.

IF YOU TESTED POSITIVE, JOINT EXHIBIT NUMBER 7 AND JOINT EXHIBIT NUMBER 5, ONLY DIFFERENCE IS A CHANGE IN THE SOLICITOR, WOULD BE THE LETTER THAT YOU GOT IF YOU TESTED

POSITIVE WHILE YOU WERE STILL PREGNANT.

IF YOU HAD DELIVERED, JOINT EXHIBIT NUMBER 6 IS THE ONE THAT YOU WOULD GET STATING ALL OF THE INFORMATION IN THAT LETTER.

Q. THANK YOU VERY MUCH. I'M GOING TO COLLECT THESE. THE JURY WILL HAVE THEM AT THE END OF THE CASE. I'M GOING TO ASK YOU TO RETURN TO THE STAND, PLEASE.

MR. HOOD: YOUR HONOR, I BELIEVE, YOUR HONOR, ALL OF THESE ARE JOINT EXHIBITS. JOINT EXHIBITS 1 THROUGH 15 IN THE NOTEBOOK WHICH THE JURY WILL HAVE.

Q. (BY MR. HOOD, CONTINUING) SO, MS. BROWN, FIRST THIS POLICY, DID IT APPLY TO MEN?

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**[BROWN 205]**

A. NO, IT WASN'T. WE ONLY TREAT FEMALES.

Q. AND YOUR ROLE, AS YOU HAVE DESCRIBED IT, DID YOU DEAL WITH PATIENTS? DID YOU YOURSELF DEAL WITH PATIENTS?

A. YES, I DID.

Q. AND HOW DID THOSE PATIENTS COME TO BE YOURS?

A. AS A CASE MANAGER YOU FOLLOW DIAGNOSES OF PATIENTS. AND ANYTIME A REFERRAL WAS MADE FROM A PHYSICIAN, SOCIAL STAFF, SOCIAL WORKER, ANYBODY IN THE HOSPITAL COULD REQUEST THAT I

SEE A PATIENT.
Q. AND IF A WOMEN WHOSE URINE DRUG SCREEN WAS DONE AND SHE TESTED POSITIVE FOR COCAINE, WAS SHE REFERRED TO YOU BY A DOCTOR?
A. TO ME OR WHOEVER WAS COVERING FOR ME.
Q. OKAY. SO, AS TO WHO THE PATIENTS WERE GOING TO BE THAT SHIRLEY BROWN WOULD TALK WITH, WORK UP THE HISTORY ON AND SO FORTH, YOU HAD NO CONTROL OVER THAT YOURSELF?
A. NO, I DIDN'T.
Q. AND UNTIL THEY WERE TESTED AND TESTED POSITIVE, YOU HAD NO WAY OF KNOWING WHICH OF THE PATIENTS COMING INTO THE MEDICAL UNIVERSITY WOULD END UP AS PATIENTS FOR YOU?
MR. WHERRY: I OBJECT TO THE LEADING OF QUESTION.
MR. HOOD, IT IS LEADING. I'LL REPHRASE IT.
Q. (BY MR. HOOD, CONTINUING) PRIOR TO A PATIENT BEING TESTED POSITIVE THAT CAME TO THE MEDICAL UNIVERSITY, DID YOU KNOW WHICH PATIENTS WOULD OR WOULDN'T BE YOURS TO TRY TO HELP?

**[BROWN 206]**

A. NO, I DIDN'T.
Q. DID YOU DECIDE WHICH PATIENTS WOULD BE REPORTED TO THE POLICE?
A. NO, I DIDN'T.

Q. WHO DID?
A. IT WAS DEFINED IN THE POLICY. BUT WHATEVER SUBSTANCE ABUSE COUNSELOR WOULD BE THE ONE WHO DETERMINED THAT THEY DID NOT COMPLETE SUBSTANCE ABUSE AND WOULD NOTIFY ME OF THAT.
Q. AND AS THE POLICY WAS ORIGINALLY SET UP WITH CHARLESTON COUNTY SUBSTANCE ABUSE, DID THEY HAVE A ROLE IN THIS PROCESS?
A. YES, THEY DID. THEY WERE THE ONES RESPONSIBLE FOR INITIALLY DOING THE SETUP OF THE TREATMENT AND EVALUATION OF WOMEN WHO WERE IDENTIFIED POSITIVE AT THE MEDICAL UNIVERSITY.
Q. AND IF THE PATIENT DID NOT COMPLY WITH CHARLESTON COUNTY SUBSTANCE ABUSE OR THE AGENCY THAT WAS TO HELP THEM WITH THEIR SUBSTANCE ABUSE, WHAT WAS YOUR ROLE THEN?
A. ACCORDING TO THE POLICY IF THEY SENT A LETTER TO ME SAYING THAT THE PATIENT WAS NONCOMPLIANT WITH TREATMENT, THEN I WAS SUPPOSED TO GIVE THAT INFORMATION TO THE POLICE.
Q. DID YOU MAKE THE DECISION? WERE YOU THE PERSON THAT DECIDED WHETHER OR NOT A PERSON OR PATIENT FAILED TO COMPLY WITH THE POLICY, OR DID CHARLESTON COUNTY SUBSTANCE ABUSE MAKE THAT DECISION?
A. THE PERSON WHO WAS DOING THEIR SUBSTANCE ABUSE EVALUATION

**[BROWN 207]**

AND TREATMENT IS THE ONE THAT MADE THE DECISION THAT THEY WERE NONCOMPLIANT WITH THEIR SUBSTANCE ABUSE TREATMENT.

Q. WAS THAT SHIRLEY BROWN?

A. THAT WAS NOT ME.

Q. AND AS THE POLICY WAS ORIGINALLY SET UP, WAS THAT CHARLESTON COUNTY SUBSTANCE ABUSE?

A. AS IT WAS ORIGINALLY SET UP IT WAS.

Q. LATER OTHER AGENCIES DEVELOPED?

A. OTHER AGENCIES LATER DEVELOPED PROGRAMS AND WOULD ACCEPT MEDICAID FUNDING FOR TREATMENT OF SUBSTANCE ABUSE DURING PREGNANCY.

Q. YOU TOLD US THE MEDICAL CRITERIA WAS NOT SOMETHING THAT SHIRLEY BROWN WROTE?

A. THAT'S CORRECT.

Q. DID THE POLICE TELL THE MEDICAL UNIVERSITY WHICH PATIENTS TO TEST? WHICH - DID THEY TELL THE DOCTORS WHICH PATIENTS TO TEST AND WHICH ONES NOT TO TEST?

A. NO, THEY DID NOT.

Q. AND WAS THERE ANY ONE DOCTOR THAT WAS INVOLVED IN THIS PROGRAM OR POLICY?

A. IT WAS THE MATERNAL FETAL FACULTY THAT DEVISED THE POLICY.

Q. WHICH IS A LOT OF DOCTORS?

A. THAT'S CORRECT.

Q. NOW, WE DISCUSSED THE INDIVIDUAL PLAINTIFFS WHEN THEY

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**[BROWN 210]**

GRIFFIN. I'M GOING TO PUT OVER HERE MS. SINGLETON'S. OKAY.
LET'S DEAL WITH YOUR INVOLVEMENT WITH THIS PATIENT.
SO IF YOU WILL, TURN TO THE PROGRESS NOTES. THE
FIRST - WHY IN THE PATIENT'S CHART ARE YOU WRITING IN
PROGRESS NOTES? WHAT IS THE REASON THAT THAT IS THE PLACE
THAT YOU MAKE YOUR ENTRIES?
A. ADVANCE PRACTICE NURSES AT THE MEDICAL UNIVERSITY WRITE
IN THE PROGRESS NOTES.
Q. AND IS THAT ALSO WHERE THE DOCTORS WRITE?
A. THAT'S ALSO WHERE THE DOCTORS WRITE.
Q. AND THAT'S DIFFERENT FROM THE NURSE NOTES WHICH HAVE AT
THE TOP OF THE PAGE NURSES' NOTES?
A. THAT'S CORRECT.
Q. AND ON THIS PATIENT, THEN, LET'S TURN TO 10-10-89. HAVE
AN ENTRY BY YOU?
THE COURT: THIS IS LORI GRIFFIN?
MR. HOOD: YES, SIR.
THE COURT: OKAY.
Q. (BY MR. HOOD, CONTINUING) BEFORE THIS POLICY WITH THIS
PATIENT, I BELIEVE, THIS IS OCTOBER 10, '89?
A. THAT IS CORRECT.

Q. OKAY. AND YOU RECORD SIMULTANEOUSLY WITH YOUR JOB IN THE FIRST SENTENCE WHAT ABOUT MS. GRIFFIN?
A. TALKED WITH PATIENT ABOUT HISTORY OF COCAINE ABUSE.
Q. OKAY. AND THEN PLEASE GO ON AND READ THE NEXT TWO

**[BROWN 211]**

SENTENCES.
A. "PATIENT STATES SHE BEGAN USING COCAINE AT AGE 19, BUT STATES SHE HAS USED IT - BUT STATES SHE HAS USED IT INFREQUENTLY UNTIL AGE 25. PATIENT STATES SHE WAS USING COCAINE WHEN SHE FOUND OUT THAT SHE WAS PREGNANT BUT STATED THAT SHE CONTINUED USING COCAINE. CONFRONTED PATIENT WITH THE FACT THAT SHE HAD SAID DURING PRENATAL VISITS AND LAST ADMISSION INTO THE HOSPITAL THAT SHE WAS NO LONGER USING DRUGS. PATIENT DID NOT RESPOND. PATIENT STATES SHE LAST USED COCAINE IN AUGUST OR SEPTEMBER. CONFRONTED PATIENT WITH THE FACT THAT SHE TESTED POSITIVE FOR COCAINE AND PATIENT STATES SHE KNEW. ALSO CONFRONTED PATIENT WITH THE FACT THAT SHE HAD TO HAVE USED COCAINE IN THE PAST COUPLE OF DAYS. PATIENT WOULD NOT TALK OPENLY ABOUT COCAINE USE. PATIENT LIVES WITH HER BOYFRIEND AND TWO CHILDREN AGES THREE AND FOUR. PATIENT

STATES HER BOYFRIEND ALSO USES COCAINE. PATIENT STATES SHE KNOWS THE RISKS OF COCAINE, THAT THE DOCTOR HAD TOLD HER THAT IT COULD CAUSE THE BABY TO DIE. PATIENT STATES THAT SHE ALSO WATCHED 48 HOURS ON CHANNEL 5 ABOUT CRACK AND NEWBORNS. DISCUSSED THE RISK, OF COCAINE WITH PATIENT. I.E., ABRUPTIO PLACENTAE, INTRAUTERINE FETAL DEATH, INCREASED RISK OF SIDS AND NEUROLOGICAL DAMAGE. NOTIFIED FRANK CORNELEY, SOLICITOR UPON REQUEST OF DR. JONES.

Q. OKAY. NOW, IS THAT YOUR INITIAL WRITE-UP ON MS. GRIFFIN?

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**[BROWN 218]**

TO OFFER EVIDENCE THAT THE POLICY WAS NOT SUCCESSFUL?

MR. WHERRY: NO. WE INTEND TO -

THE COURT: YOU SAY NO, THAT YOU DON'T?

MR. WHERRY: WELL LET ME, IT'S A QUALIFIED NO.

THE COURT: DIDN'T YOU JUST SAY NO PERIOD?

MR. WHERRY: I SAID NO, WE INTEND TO, AND THAT WAS GOING TO BE THE QUALIFICATION OF MY NO. WE INTEND TO OFFER EVIDENCE THAT THE POLICY WAS NOT NARROWLY TAILORED TO FIT THE NEED AND THERE WAS A MUCH BETTER WAY AND MORE SUCCESSFUL WAY

OF DOING IT. I'M NOT GOING TO SAY NO ONE WAS HELPED. I'M NOT GOING TO SAY THERE WASN'T A MOTHER WHO DIDN'T GET OFF DRUGS. I'M GOING TO SAY THAT IT WAS TOO BROAD, NOT NARROWLY TAILORED AND THAT THERE WAS A MUCH BETTER AND MORE EFFECTIVE WAY OF DOING IT.

THE COURT: NOW, MS. BROWN, THERE HAS BEEN SOME - MENTION OF THE FACT THAT CERTAIN BABIES - I DON'T KNOW THAT THERE IS ANY - ANY TESTIMONY THAT THEY WERE TESTED FOR COCAINE. BUT THAT THERE IS TESTIMONY THAT CERTAIN LETTERS WERE SENT IF THE BABY WAS TESTED POSITIVE FOR COCAINE OR SOMEHOW IT -

THE WITNESS: THE REVISED POLICY IN MARCH OF 1990, THE ONE WHEN WE CHANGED THE POLICY.

THE COURT: YES.

THE WITNESS: TO WHERE PATIENTS WOULD BE GIVEN THE BENEFIT - THAT DELIVERED, THE SAME BENEFIT AS A WOMEN WHO WAS

**[BROWN 219]**

STILL PREGNANT OF THE EDUCATION AND REFERRAL OF TREATMENT IN MARCH OF 1990. AND THAT WAS ALREADY ENTERED WAS THE SCREENS - WERE THE CRITERIA FOR INFANTS THAT WERE TO BE SCREENED UNDERNEATH THE POLICY.

THE COURT: SO YOU'RE SAYING AFTER JANUARY AND MARCH OF 1990, THAT THE BABIES WERE SCREENED?

THE WITNESS: THEY WERE - THERE WAS A FORMALIZED PROTOCOL ON THEM BEING SCREENED. IF A MOTHER TESTED POSITIVE AT DELIVERY, THE NURSERY WAS NOTIFIED AND THAT BABY WAS SCREENED AT THAT POINT IN TIME.

THE COURT: THIS BABY HERE WAS NOT SCREENED?

THE WITNESS: I WOULD HAVE TO LOOK AT THE RECORD TO SEE. I DON'T KNOW. IF YOU LET ME LOOK AT THE RECORD, I COULD SEE.

THE COURT: WHILE SHE IS LOOKING AT THAT I DON'T THINK IT WILL DISTURB HER IF WE DISCUSS THE MATTER OF PRIVILEGE. WHAT IS IT THAT GIVES THE PATIENT, THE CHILD A PRIVILEGE IN THIS CASE? WERE IT'S A CHILD'S PRIVATE PERSONAL MEDICAL RECORDS, WHERE DO THEY GET A PRIVILEGE FOR THEM?

MR. WHERRY: THEY GET A PRIVILEGE FOR MEDICAL RECORDS JUST AS EVERYONE DOES. BEAR WITH ME A MOMENT WHILE I LOOK UNDER PRIVILEGES.

THE COURT: YOU'RE NOT GOING TO FIND ANY PRIVILEGE STATED IN THERE.

MR. WHERRY: I STAND CORRECTED. I THINK THAT THERE

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**[BROWN 225]**

THE COURT: THERE IS NO PRIVILEGE IN THE STATE OF SOUTH CAROLINA EXCEPT BETWEEN THE CASE OF A PSYCHIATRIST AND PHYSICIAN.

MR. HOOD: YOU'RE RIGHT.

THE COURT: DON'T TELL ME I'M RIGHT.

MR. HOOD: I DO A LOT OF THAT KIND OF WORK AND I THINK YOU'RE RIGHT. BUT I'LL GO ON.

I UNDERSTAND YOUR RULING AND YOUR REASONS AND IT DOESN'T REALLY MATTER, TO BE HONEST. TO BE HONEST WITH YOU.

THE COURT: IT IS LORI GRIFFIN AND SHE DID SAY DANIELL IS PERFECT. AND SO I THINK THAT WE PROBABLY - THAT PROBABLY AT LEAST ARGUABLY GETS OVER THE RELEVANCE QUESTION. AND THEN WE GO TO THE PRIVILEGE QUESTION. AND I'LL LOOK AT THAT WHEN YOU GET ME SOMETHING TO LOOK AT. BUT I DO THINK THAT WE NEED TO DECIDE WHERE WE'RE GOING ON THIS QUESTION OF THE CONDITION OF THESE BABIES.

NOW, IF THE PLAINTIFF PROCEEDS TO PROVE THAT THEY'RE PERFECT, THEN I KNOW WHAT YOU'RE GOING TO WANT TO PROVE. YOU'RE GOING TO WANT TO PROVE THEY'RE ALL BASKET CASES OR ALL COCAINE AFFECTED. AND I THINK IT'S GOING TO CUT BOTH WAYS,

AND I'M INCLINED TO SAY NEITHER IS ADMISSIBLE. I'M INCLINED TO BELIEVE THAT THE SUCCESS OF THIS PROGRAM IS NOT ADMISSIBLE. I THINK MS. JESSUP WANTS TO TESTIFY TO THAT, BUT I DON'T THINK THAT HAS TO DO WITH THE NARROWING OF THE PROGRAM.

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**[BROWN 237]**

Q. OKAY. LET'S TALK ABOUT THE OTHER PLAINTIFF THAT HAS TESTIFIED AND IS AROUND THE CORNER THERE OF THE WITNESS BOX. TURN TO YOUR NOTES ON 11-10-89 FOR MS. SINGLETON, PLEASE.

A. ALL RIGHT.

Q. FIRST OF ALL THIS LADY, AS YOU LOOK THROUGH HER CHART, YOU DID BEFORE YOU GOT ON THE STAND, DOES IT INDICATE IF SHE WAS BROUGHT IN BY EMS OR DELIVERED A BABY ON THE WAY?

A. NO. SHE CAME IN THROUGH OUR EXAM ROOM AND DELIVERED A BABY IN LABOR AND DELIVERY.

Q. ALL RIGHT. AND BY COMING IN THAT WAY WOULD SHE GET THIS HOSPITAL PAMPHLET?

A. NO, SHE WOULD NOT.

Q. WERE YOU THE - WERE YOU THE CASE MANAGER THAT WORKED UP THE HISTORY ON THIS PATIENT?

A. YES, I WAS.

Q. TELL THE JURY WHAT YOU RECORDED AS PART OF HER HISTORY.

IF THERE IS SOMETHING SENSITIVE IN THERE JUST PASS OVER THAT, PLEASE.

A. OKAY. STARTING WITH, "THE PATIENT CONFRONTED WITH POSITIVE URINE DRUG SCREEN FOR MARIJUANA AND COCAINE. PATIENT STATES SHE GAVE PERMISSION FOR THE URINE DRUG SCREEN BECAUSE SHE THOUGHT SHE WAS CLEAN." THAT IS IN QUOTES. AND WHEN I WROTE IT IN QUOTE MEANS THAT IS EXACTLY WHAT SHE TOLD ME." PATIENT ADMITS TO USE OF MARIJUANA BUT STATES SHE HAD NEVER USED COCAINE. PATIENT STATES SHE WOULD NOT USE COCAINE

**[BROWN 238]**

BECAUSE SHE HAD SEEN ON TV WHAT COCAINE WOULD DO TO HER BABY. PATIENT STATES HER BROTHER USES COCAINE IN THE BATHROOM AND THAT HER USING THE BATHROOM AFTER HER BROTHER IS PROBABLY HOW COCAINE WAS IN HER URINE. PATIENT STATES HER BROTHER LAST USED COCAINE THE SATURDAY BEFORE SHE WAS ADMITTED TO THE HOSPITAL. EXPLAINED TO PATIENT THAT USING THE BATHROOM AFTER HER BROTHER WOULD NOT CAUSE HER TO TEST POSITIVE FOR COCAINE. EXPLAINED TO PATIENT THAT I SUSPECTED THAT SHE EITHER SMOKED OR SNORTED COCAINE IN THE PAST TWO DAYS. EXPLAINED TO PATIENT

PROBLEMS THAT CAN OCCUR IN THE INFANT WHEN MOTHERS USE COCAINE IN PREGNANCY."

Q. LET ME STOP YOU RIGHT THERE. IS THIS SOMETHING THAT YOU EXPLAINED TO MS. SINGLETON?

A. YES, IT IS.

Q. AND THIS IS ON 11-10-89 WHEN SHE WAS ADMITTED?

A. WHEN I WAS NOTIFIED TO SEE HER.

Q. OKAY.

THE COURT: GO AHEAD.

Q. (BY MR. HOOD, CONTINUING) GO AHEAD.

A. "EXPLAINED TO PATIENT THAT IT WAS IMPORTANT TO KEEP INFANT IN QUIET AREA, HANDLE GENTLY, ENCOURAGE FEEDINGS EVERY THREE TO FOUR HOURS AND KEEP UP WITH INFANT'S WELL BABY CARE. INFORMED PATIENT THAT THE POLICE DEPARTMENT AND DSS PROTECTIVE SERVICES WOULD BE NOTIFIED OF THE POSITIVE DRUG SCREEN."

Q. THAT'S WHAT YOU WROTE DOWN WHEN YOU FIRST, AS A CASE

**[BROWN 239]**

MANAGER, TALKED TO THIS PATIENT?

A. THAT'S CORRECT.

Q. NOW, DOES THIS PATIENT COME IN UNDER THE HOSPITAL POLICY, WHEN SHE COMES IN AND THE DELIVERY WAS 11-9-89. DO WE HAVE THE POLICY IN EFFECT AT THAT TIME?

A. THE WORKING DRAFT OF THE POLICY WAS IN EFFECT. IT HAD

NOT GONE THROUGH ALL OF THE EXECUTIVE COMMITTEES AT THE MEDICAL UNIVERSITY AT THAT TIME, I DO NOT BELIEVE.

Q. OKAY. NOW AFTER THE POLICY WAS IN EFFECT FOR THREE MONTHS, WAS THERE A CHANGE TO THE POLICY?

A. YES, IT WAS.

Q. EXPLAIN THAT TO THE JURY.

A. IN JANUARY OF 1990 A MEETING WAS CALLED BY THE SOLICITOR'S OFFICE AND DSS AND MEDICAL UNIVERSITY MET AND DISCUSSED THE POLICY. AND IT WAS DECIDED THAT WOMEN WHO TESTED POSITIVE AT DELIVERY AND HAD NOT HAD THE BENEFITS OF THE PRENATAL EDUCATION OR CHANCE OF GOING INTO DRUG TREATMENT BEFORE THEY WERE ARRESTED, THAT WE WOULD CHANGE THE POLICY SO THAT IF THEY TESTED POSITIVE AT DELIVERY, THAT THEY WOULD BE OFFERED TREATMENT.

Q. AND IN FACT WHEN THIS PATIENT CAME BACK A SECOND TIME FOR ANOTHER DELIVERY -

MR. WHERRY: OBJECTION. NOT RELEVANT, IT'S NOT THE SUBJECT OF THIS LAWSUIT. YOU PREVIOUSLY RULED ON THAT I BELIEVE WHEN THE WITNESS WAS ON THE STAND.

* * *

**[BROWN 244]**

TESTIMONY HERE WAS A ROLODEX KEPT IN YOUR OFFICE. WHAT WAS THE PURPOSE OF THAT ROLODEX?

A. THE ROLODEX WAS A REFERENCE FOR ME WHEN A PATIENT CALLED SO I WOULD KNOW WHERE TO GO PULL THEIR RECORD AND ANSWER ANY QUESTIONS THAT THEY MIGHT HAVE.

Q. AND WHO FROM THE SOLICITOR'S OFFICE WAS ALLOWED TO LOOK AT WHAT INFORMATION ON A GIVEN PATIENT IN YOUR OFFICE?

A. GARDEN BLINCOW WAS - CAME ABOUT ONCE A WEEK FOR A BRIEF TIME. SHE DIDN'T COME THE WHOLE TIME DURING THE POLICY. AND WAS GIVEN AND LOOKED AT THE SOLICITOR LETTER AND WOULD ENTER INFORMATION INTO THE ROLODEX.

Q. DID YOU SHARE WITH HER FROM YOUR LOCKED RECORDS THE MEDICAL RECORD ON ANY PARTICULAR PATIENT?

A. NO, I DID NOT.

Q. WHAT WAS THE INTENT OF THE INTERAGENCY POLICY?

A. IT WAS TO PROTECT CHILDREN BEFORE THEY WERE BORN AS WELL AS AFTER THEY WERE BORN. AND TO TRY TO GET MOTHERS INTO TREATMENT.

Q. WAS THE PURPOSE OF THIS POLICY TO HAVE MOTHERS THAT USED COCAINE THROWN IN JAIL?

MR. WHERRY: OBJECTION. LEADING.

THE COURT: I THINK THE QUESTION IS LEADING.

OBVIOUSLY THE RULE PERMITS LEADING QUESTIONS WHERE THEY'RE NECESSARY. BUT I CAN THINK OF MANY LESS LEADING, IF NOT ALTOGETHER UNLEADING WAYS TO ASK THAT QUESTION, SO I SUSTAIN

**[BROWN 245]**

THE QUESTION.
Q. (BY MR. HOOD, CONTINUING) WHAT ABOUT JAIL?
A. THE INTENT WAS NOT TO HAVE WOMEN ARRESTED.
Q. BEFORE THE POLICY WENT INTO EFFECT, OCTOBER, NOVEMBER OF 1989, WERE WOMEN THAT CAME IN TESTED? GIVEN DRUG TESTS? URINE DRUG SCREEN?
A. YES, THEY WERE. THE FIRST ONE I REMEMBER WAS IN OCTOBER OF 1988.
Q. UNRELATED TO THE POLICY THIS LAWSUIT IS ABOUT?
A. THAT IS CORRECT.
Q. AND BEFORE THE POLICY WENT INTO EFFECT IN THE FALL OF '89, WERE WOMEN VOLUNTARILY GOING TO SUBSTANCE ABUSE?
A. NO, THEY WERE NOT.
MR. WHERRY: OBJECTION, IRRELEVANT.
Q. (BY MR. HOOD, CONTINUING) BASED ON YOUR KNOWLEDGE?
A. WHEN I WAS CONSULTED -
THE COURT: YES, SIR.
MR. WHERRY: OBJECTION, NOT RELEVANT. OTHER WOMEN,

OTHER WOMEN PLAINTIFFS. BEFORE THE POLICY.

THE COURT: I OVERRULE THE OBJECTION.

MR. WHERRY: VERY WELL, SIR.

Q. (BY MR. HOOD, CONTINUING) BEFORE THE POLICY, WERE WOMEN THAT WERE USING COCAINE THAT WERE PREGNANT, WERE THEY GOING TO SUBSTANCE ABUSE?

A. WHEN I WAS NOTIFIED ABOUT A POSITIVE URINE DRUG SCREEN I

**[BROWN 246]**

WOULD GO AND TALK TO THE PEOPLE ABOUT HARMFUL EFFECTS AND MAKE ARRANGEMENTS FOR THEM TO GO TO SUBSTANCE ABUSE. AND OF THOSE WOMEN, WHEN THEY CAME BACK IN AND DELIVERED BABIES SUBSEQUENTLY, NONE OF THEM REPORTED THAT THEY HAD BEEN TO SUBSTANCE ABUSE.

Q. AFTER THE POLICY, DID WOMEN, SUCH AS THE FIRST ONE WE HEARD UNDER THE POLICY, MRS. SINGLETON, DID THEY GO TO SUBSTANCE ABUSE?

A. YES, THEY DID.

Q. THANK YOU VERY MUCH.

MR. HOOD: THANK YOU, YOUR HONOR.

THE COURT: ANYTHING FURTHER?

<u>REDIRECT EXAMINATION</u>

BY MR. WHERRY:

Q. WITH WHAT YOU JUST SAID RECENTLY ABOUT THE ATTEMPT OF THE

POLICY WAS NOT TO ARREST WOMEN OR SEND THEM TO JAIL?
A. THAT'S CORRECT.
Q. SO I TAKE IT THAT WHEN THE WOMEN WERE ARRESTED, THESE TEN PLAINTIFFS WERE, THEY WERE NOT ARRESTED FOR THE INTENT OF PROSECUTING THEM THROUGH THE CRIMINAL JUSTICE SYSTEM, BUT RATHER WERE ARRESTED TO ACCOMPLISH SOME MEDICAL PURPOSE, FAIR?
A. I WASN'T THE ONE THAT HAD THEM ARRESTED. I COULDN'T SPEAK TO THAT.
Q. WELL, YOU WERE INTIMATELY INVOLVED IN THE FORMULATION OF, THE CREATION OF, AND THE IMPLEMENTATION OF THE INTERAGENCY

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**[BROWN 250]**

THE COURT: I'M NOT GOING TO PERMIT THAT QUESTION. MR. HOOD OBJECTED TO IT ON THE GROUND THAT IT'S NOT RESPONSIVE TO HIS EXAMINATION. IT IS NOT. YOU WENT INTO THAT IN GREAT DETAIL IN YOUR CROSS-EXAMINATION. YOU QUESTIONED HER OVER AND OVER AND OVER AGAIN AS TO WHAT HER INVOLVEMENT IN THE FORMATION OF THIS POLICY WAS, AND I'M NOT GOING INTO IT AGAIN. IT'S NOT IN RESPONSE TO NEW MATTER. YOU MAY PROCEED.
Q. (BY MR. WHERRY, CONTINUING) MY INQUIRY IN THAT AREA, MS.

BROWN, WAS, I THINK YOU INDICATED THAT INTENT OF THE POLICY
WAS NOT TO ARREST PEOPLE; IS THAT RIGHT?
A. THAT'S CORRECT.
Q. AND WHEN THEY WERE ARRESTED, THE INTENT OF THE ARREST,
THE INTENT OF THAT PART OF THE POLICY WAS NOT TO PROSECUTE
THEM BUT TO HELP THEM AND THEIR BABIES, FAIR?
A. THAT WOULD BE FAIR.
Q. YOU TALKED ABOUT THE ROLODEX, MS. BROWN, AND HOW THAT WAS
THE ONLY THING IN EFFECT THAT THE SOLICITOR'S REPRESENTATIVE
HAD ACCESS TO; IS THAT RIGHT?
A. IN MY OFFICE, THAT IS CORRECT.
Q. NOW WERE THE PATIENTS' RECORDS IN YOUR OFFICE THAT WERE
KEPT IN THIS LOCKED DRAWER, WERE THEY KEPT IN A PARTICULAR
FILE?
A. YES, THEY WERE.
Q. AND THERE WAS A FILE FOR EACH PATIENT, WASN'T THERE?
A. NO, THERE WAS NOT.

**[BROWN 251]**

Q. THERE WAS A FILE FOR ALL OF PATIENTS ALL KEPT TOGETHER?
A. THERE WERE BY MONTH AND YEAR WITH EVERYONE THAT TESTED
POSITIVE DURING THAT MONTH. INFORMATION PUT IN THERE.
Q. AND THOSE FILES WERE, OF COURSE, NOT MADE AVAILABLE TO
THE SOLICITOR'S OFFICE, WERE THEY?

A. NO, THEY WERE NOT.
Q. SHOWING, YOU, MA'AM, WHAT HAS BEEN MARKED P 233-A, WHICH CAME FROM YOUR OFFICE, LET ME SHOW YOU THE SECOND PAGE OF THAT, MS. BROWN, AND ASK YOU IF THAT ISN'T THE OUTSIDE OF ONE OF THOSE FILE FOLDERS THAT CAME FROM YOUR OFFICE WITH YOUR BATE STAMP NUMBER AND CONTAINS THE HANDWRITING OF BOTH YOU AND GARDEN BLINCOW, THE REPRESENTATIVE OF THE SOLICITOR'S OFFICE?
A. THAT IS A FILE FOLDER FROM THE FILE.
Q. THE HANDWRITING THAT IS ON THE OUTSIDE OF THAT FILE FOLDER IS BOTH YOURS AND GARDEN BLINCOW'S; ISN'T THAT RIGHT?
A. I CAN ATTEST TO MINE AND IT PROBABLY - I CAN'T ATTEST TO GARDEN. BUT SHE DID WRITE ON FILE FOLDERS.
Q. RIGHT. GARDEN BLINCOW FROM THE SOLICITOR'S OFFICE?
A. THAT IS CORRECT.
Q. WROTE ON THE FILE FOLDERS THAT YOU JUST SAID THAT SHE DIDN'T HAVE ACCESS TO, FAIR?
A. RIGHT.
Q. MAY I HAVE THAT DOCUMENT BACK, PLEASE.
WITH RESPECT TO LAVERNE SINGLETON, I THINK IT WAS ALSO LORI GRIFFIN, YOU INDICATED THAT THEY WERE NOT ARRESTED

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**[BROWN 279]**

MR. WHERRY: NO, SIR.
THE COURT: OKAY.
MS. BROWN, I WOULD LIKE TO ASK YOU JUST A FEW QUESTIONS ABOUT THE DRUG SCREENS. WHEN YOU USE THE WORD DRUG SCREEN, OF COURSE YOU MEAN YOU TAKE A URINE SAMPLE AND THE LABORATORY EXAMINES THAT URINE TO SEE WHAT DRUGS ARE IN IT?
THE WITNESS: THAT'S CORRECT.
THE COURT: ALL RIGHT. MR. HOOD ASKED YOU A QUESTION THAT MAY HAVE ANSWERED MY QUESTION, BUT I WANT TO BE ABSOLUTELY SURE. WHEN DID THE MEDICAL UNIVERSITY OR DID THE MEDICAL UNIVERSITY EVER BEGIN ROUTINELY GIVING DRUG SCREENS TO PRENATAL PATIENTS?
THE WITNESS: I DON'T THINK I - IF PEOPLE MET CERTAIN CRITERIA THAT WERE LISTED THAT WERE PUBLISHED BY THE FACULTY, YOU KNOW, TO GO OUT INTO THE CLINICS THAT THE FOLLOWING ARE INDICATORS AND WOULD NEED TO BE SCREENED, YOU KNOW, FOR MEDICAL EVALUATION, THEN THEY WOULD HAVE.
THE COURT: BUT YOU NEVER GAVE IT TO EVERY PREGNANT WOMEN THAT REPORTED FOR PRENATAL CARE?
THE WITNESS: NO, WE DIDN'T.

THE COURT: ALL RIGHT. NOW WHEN DID YOU FIRST START GIVING THE DRUG SCREENS TO SOME WOMEN WHO REPORTED FOR PRENATAL CARE?

THE WITNESS: THE FIRST URINE DRUG SCREEN THAT I GOT

**[BROWN 280]**

CALLED IN ON WAS IN OCTOBER OF 1988.

THE COURT: OKAY. WAS THAT AT THAT TIME A POLICY OR DID IT JUST OCCUR TO THAT ONE PATIENT THAT YOU GOT CALLED IN ON?

THE WITNESS: IT OCCURRED BECAUSE THIS PATIENT WAS AN ABRUPTING. THE PLACENTA WAS SEPARATING, IT WAS PUTTING HER LIFE AND BABY'S LIFE IN JEOPARDY, AND THE PHYSICIAN ORDERS A TEST AS PART OF MANY TESTS THAT THEY ORDER.

THE COURT: NOW WAS THAT SOMETHING THAT THAT PHYSICIAN DID BECAUSE THAT PHYSICIAN THOUGHT IT WAS GOOD MEDICINE OR WAS IT SOMETHING THAT WAS DONE BY ALL PHYSICIANS IN THE HOSPITAL?

THE WITNESS: THAT WAS ABOUT THE TIME OF THE LITERATURE THAT PHYSICIANS WERE IN CONFERENCES AND ATTENDING CONFERENCES WHERE THEY WERE BEING TOLD AS PHYSICIANS, AND THEY TOLD ME AND THEN I READ SOME IN THE LITERATURE, THAT THAT WAS

ONE OF THE POSSIBLE CAUSES. AND IT WAS BEING DONE TO LOOK FOR REASONS.

THE COURT: OKAY. LET ME BE MORE DIRECT. WHEN THE POLICY WAS INITIATED IN 1989?

THE WITNESS: CORRECT.

THE COURT: YOU BEGAN DOING DRUG SCREENS ON PREGNANT WOMEN THAT MET CERTAIN CRITERIA?

THE WITNESS: THAT IS CORRECT.

THE COURT: NOW BEFORE THAT TIME, DID YOU DO DRUG

**[BROWN 281]**

SCREENS ON ANY PREGNANT WOMEN? AND IF SO, WHAT WERE THE CRITERIA FOR THOSE DRUG SCREENS? WHAT I'M TRYING TO FIND OUT IS, WHETHER INDEPENDENT OF THIS POLICY YOU HAD A POLICY OF DOING DRUG SCREENS ON PREGNANT WOMEN, AND IF SO, WHAT WAS THAT?

THE WITNESS: WE HAD A PROTOCOL. IT'S NOT A FORMAL POLICY, IT DIDN'T GO THROUGH COMMITTEES, OKAY? IT WAS PROTOCOL WITHIN THE DEPARTMENT OF OB AND IT SAID AND I WOULD HAVE TO, YOU KNOW - I MEAN BASICALLY NO PRENATAL CARE, LATE PRENATAL CARE, ABRUPTIO PLACENTAE, INTRAUTERINE FETAL DEATH, PRETERM LABOR, AND THERE WAS ONE OTHER ONE THAT WAS SUPPOSED

TO BE SCREENED PRENATALLY OR AT DELIVERY. I MEAN, THAT WAS A PROTOCOL ACCEPTED BY THE PHYSICIANS AND IT WAS SOMETHING THAT ALL PHYSICIANS WERE ADHERING TO.

THE COURT: AND WHEN YOU SAY PROTOCOL, IS THAT IN WRITING?

THE WITNESS: A PROTOCOL AT THE MEDICAL UNIVERSITY DID NOT AT THAT POINT IN TIME HAVE TO GO THROUGH ANY FORMAL COMMITTEES FOR APPROVAL. THE DEPARTMENT OF MATERNAL FETAL MEDICINE, THEY MET AND DISCUSSED PROBLEMS. AND THEY WOULD SEND OUT A MEMO AND SAY DEAR RESIDENTS, DEAR FACULTY, THE FOLLOWING ARE TO BE SCREENED.

THE COURT: OKAY. AND SO IT WOULD BE IN THAT FORM?

THE WITNESS: IT WOULD BE IN THAT FORM.

**[BROWN 282]**

THE COURT: OKAY. NOW THAT PROTOCOL, IT COMMENCED ABOUT WHAT TIME?

THE WITNESS: THERE WAS SOME RANDOM SCREENING STARTING IN OCTOBER.

THE COURT: UMM-HMM.

THE WITNESS: IT WAS DISCUSSED IN APRIL, BUT IF I REMEMBER CORRECTLY, IT WAS ABOUT JUNE OF 1989 WAS THE DATE OF THE OFFICIAL PROTOCOL.

THE COURT: OKAY.
THE WITNESS: SOMEWHERE BETWEEN APRIL AND JUNE. IT'S BEEN A LONG TIME AGO, I CAN'T REMEMBER, BUT I DO KNOW THAT IT DID COME OUT IN WRITING IN THE DEPARTMENT.
THE COURT: NOW WHAT HAPPENED IN THAT PROTOCOL WHEN THE POLICY UNDER DISCUSSION IN THIS CASE WAS INITIATED?
THE WITNESS: ANYONE WHO TESTED POSITIVE FROM OCTOBER OF 1988 UNTIL THE ADOPTION OF THE FORMAL POLICY, THE PERSON WAS COUNSELED ABOUT THE HARMFUL EFFECTS OF DRUGS TO THEM OR TO THEIR CHILD, OR WERE REFERRED TO SUBSTANCE ABUSE AND A REFERRAL WAS MADE TO THE DEPARTMENT OF SOCIAL SERVICES.
THE COURT: THE PROTOCOL THAT YOU'RE TALKING ABOUT THAT WAS JUNE OF '89, WHATEVER, WAS IT EVER REVOKED OR RECALLED?
THE WITNESS: WHENEVER THE - A HOSPITAL POLICY OVERRIDES A PROTOCOL.
THE COURT: OKAY. AND WAS THAT PROTOCOL

**[BROWN 283]**

OVERRIDDEN?
THE WITNESS: IT WAS WHEN THE POLICY WENT INTO EFFECT IN NOVEMBER.
THE COURT: OKAY.

THE WITNESS: OR LATE OCTOBER, YOU KNOW. I DON'T REMEMBER THE EXACT DATE THE EXECUTIVE COMMITTEE APPROVED IT.

THE COURT: OKAY.

THE WITNESS: UNTIL THEN PEOPLE WERE SCREENED BASED ON THAT PROTOCOL.

THE COURT: OKAY. I THINK - NOW, THE TESTING OF NEWBORN INFANTS, IS THAT SOMETHING THAT YOU CAN DO? CAN YOU TEST A NEWBORN INFANT FOR DRUGS?

THE WITNESS: THAT IS THE WAY THAT IT WAS INTERPRETED TO US BASED ON THE STATUTE.

THE COURT: YOU'RE SAYING THAT YOU CAN - I DON'T MEAN LEGALLY, I MEAN, CAN YOU PEDIATRICALLY DO IT TO AN INFANT?

THE WITNESS: WELL, WHENEVER A BABY IS BORN YOU PUT A - THE URINE BAG ON AND WHEN THE BABY VOIDS THEY GIVE YOU THE SPECIMEN. YOU TAKE THE BAG OFF AND YOU SEND IT TO THE LAB.

THE COURT: JUST LIKE WOULD YOU WITH AN ADULT.

THE WITNESS: JUST LIKE YOU WOULD EXCEPT THAT AN ADULT WOULD GO TO THE BATHROOM.

THE COURT: UMM-HMM. AND GO

THE WITNESS: AND GO INTO A LITTLE CUP.
THE COURT: I UNDERSTAND THE DIFFERENCE.
THE WITNESS: YOU KNOW, I DIDN'T WANT SOMEONE TO THINK WE WERE PUTTING BAGS ON PEOPLE. BUT ON BABIES WE COULDN'T.
THE COURT: I'M NOT REAL BRIGHT, BUT I GOT THAT. WHAT ABOUT THE DRUG SCREENING ON NEWBORN BABIES, HAVE YOU EVER INITIATED A POLICY WHERE YOU DO THAT? ANSWER ME YES OR NO.
THE WITNESS: YES.
THE COURT: ALL RIGHT. WHEN DID YOU START DOING THAT?
THE WITNESS: WHEN DID IT BECOME A FORMAL POLICY?
THE COURT: OR PROTOCOL OR WHATEVER.
THE WITNESS: OKAY. AROUND - WELL IN JANUARY OF '90. JANUARY OF 1990 THE NEONATOLOGISTS WERE DISCUSSING IT. AND IN MARCH OF 1990 IT BECAME PART OF THE - OF A NEW REVISED POLICY WITH LISTING ALL OF THE INDICATORS FOR BABIES.
THE COURT: YOU TALKED ABOUT THE REVISION OF THE POLICY IN QUESTION. IS THAT THE -
THE WITNESS: THAT'S THE REVISION.
THE COURT: ALL RIGHT. NOW, AND SO IN JANUARY AND

THEN FORMALLY IN MARCH, YOU BEGAN SOME SORT OF SCREENING OF NEWBORN CHILDREN FOR DRUGS?
THE WITNESS: THE SCREENING BEGAN IN OCTOBER OF 1989
ON CHILDREN IF THE PHYSICIAN DEEMED IT NECESSARY. LIKE IF A

**[BROWN 285]**

BABY WAS JITTERY, IRRITABLE, REAL FUSSY, ONE OF THE TESTS THAT THEY MIGHT ORDER WAS A BLOOD SUGAR, BUT THEY ALSO COULD ORDER A URINE DRUG SCREEN TRYING TO FIND OUT WHY THIS BABY WAS THIS WAY.
THE COURT: BUT THAT WAS PHYSICIAN INITIATED?
THE WITNESS: THAT WAS PHYSICIAN INITIATED.
THE COURT: NO PROTOCOL?
THE WITNESS: NO PROTOCOL.
THE COURT: AND THAT'S THE WAY IT CONTINUED UP UNTIL JANUARY OF 1989?
THE WITNESS: UNTIL JANUARY OF -
THE COURT: '90.
THE WITNESS: '90. BUT THE ACTUAL PUBLISHED THING CAME OUT IN MARCH OF 1990.
THE COURT: WHEN YOU BEGAN THESE DRUG SCREENS ON NEWBORN CHILDREN, HOW DID YOU CHOSE WHICH CHILDREN YOU WERE GOING TO SCREEN?
THE WITNESS: BASICALLY IF THE NEONATOLOGISTS

DETERMINE WHAT WERE RISK FACTORS THAT THEY NEEDED TO DO A URINE DRUG SCREEN ON, BASED ON THEIR LITERATURE REVIEW.

THE COURT: SO THERE WASN'T ANY CRITERIA, SUCH AS ARE IN THE POLICY, FOR DOING NEWBORN INFANTS' DRUG SCREENING?

THE WITNESS: IN MARCH OF -

THE COURT: CERTAINLY, YOU GO RIGHT AHEAD. GO RIGHT AHEAD. RIGHT AHEAD.

**[BROWN 286]**

THE WITNESS: THIS IS EXHIBIT NUMBER 4 IN THIS BOOK.

THE COURT: YES.

THE WITNESS: MARCH OF 1990 INFANTS TO BE SCREENED IN BOTH THE WELL BABY NURSERY AND NEWBORN INTENSIVE CARE UNIT BY URINE OR MECONIUM IF POSSIBLE DRUG TESTING INCLUDE THOSE DELIVERED FOLLOWING OR WITH: NO MATERNAL PRENATAL CARE.

LATE PRENATAL CARE OBTAINED AFTER 24 WEEKS GESTATION.

INCOMPLETE MATERNAL PRENATAL CARE FEWER THAN FIVE OBSTETRICAL VISITS.

ABRUPTIO PLACENTA.

PRETERM LABOR OF NO OBVIOUS CAUSE.

IUGR, BABY'S SIZE IS DECREASED IN UTERO. OR AND SGA BABY MEANS THAT WHEN A BABY IS BORN WE HAVE THESE CHARTS AND

WE LOOK AT HOW LONG THE BABY AND WHAT THEIR GESTATIONAL AGE IS AND WHAT THE WEIGHT IS, AND THEN THE PHYSICIAN DECIDES IF THIS IS AN SGA BABY, WHICH MEANS THAT IT IS SMALLER THAN IT NEEDS TO BE, OF NO OBVIOUS CAUSE.

PREVIOUS KNOWN MATERNAL DRUG OR ALCOHOL ABUSE.

UNEXPLAINED CONGENITAL ANOMALIES.

CLINICAL MANIFESTATIONS SUGGESTING EVIDENCE OF DRUG WITHDRAWAL.

THE COURT: OKAY. THANK YOU. ANY FURTHER QUESTIONS OF THIS WITNESS BY THE PLAINTIFF OR THE DEFENDANT?

MR. WHERRY: EXCUSE ME FOR A MOMENT, YOUR HONOR.

**[BROWN 287]**

(PAUSE.)

MR. WHERRY: JUST ONE OR TWO.

RECROSS EXAMINATION

BY MR. WHERRY:

Q. BEFORE THE POLICY, THE TESTING THAT THE JUDGE ASKED YOU ABOUT WAS FOR PURELY MEDICAL PURPOSES, WASN'T IT?

A. THAT IS CORRECT.

Q. AFTER THE POLICY, THE TESTING THAT THE JUDGE ASKED YOU ABOUT WAS FOR BOTH MEDICAL AND LEGAL PURPOSES, WASN'T IT?

A. IT STILL WAS FOR MEDICAL PURPOSES.

Q. WAS IT ALSO FOR LEGAL PURPOSES?
MR. HOOD: SHE HAS ANSWERED THE QUESTION, YOUR HONOR.
THE COURT: SHE DID NOT ANSWER THE QUESTION. I WOULD LIKE IT ANSWERED. YOU ANSWERED THE QUESTION HOW?
THE WITNESS: THE REASON THE TESTS WERE DONE WERE FOR MEDICAL REASONS.
THE COURT: OKAY.
Q. (BY MR. WHERRY, CONTINUING) AND NOT FOR LEGAL REASONS?
A. THE CRITERIA WERE DETERMINED BY THE PHYSICIANS ON WHO WAS TO BE SCREENED.
MR. WHERRY: THAT'S IT.
MR. HOOD: NO QUESTIONS.
THE COURT: THANK YOU, MA'AM. YOU'RE EXCUSED.

CERTIFICATE

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

**EXCERPTS FROM TESTIMONY OF SHIRLEY BROWN 12/10/96**

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THEY WOULD CALL THEIR OWN CLIENTS. AND THOUGH I ASKED THEM TO GO AHEAD AND EXAMINE THEM AT THAT TIME TO CUT DOWN ON THE REPETITION, THEN I WOULD LET HIM, IN ORDER TO PROPERLY PRESENT HIS CASE, TO RECALL HER.

I'M NOT GOING TO LET HIM GO BACK IN ALL OF IT, BUT I'M GOING TO LET HIM ADD SOME CONTEXT TO IT AND BE A LITTLE BIT REPETITIVE BECAUSE I THINK I NEED TO DO THAT TO BE FAIR.

AND I THINK THAT'S PRECISELY WHAT I SAID, BECAUSE THAT'S WHAT I ALWAYS DO AND I DON'T KNOW WHY I WOULD DO IT ANY DIFFERENT HERE.

I'LL LET YOU PROCEED. WE'RE NOT GOING INTO THE WHOLE THING, BUT I THINK YOU UNDERSTAND MY RULING.

Q. (BY MR. HOOD, CONTINUING) FIRST OF ALL, DID YOU MAKE THE DECISION, MS. BROWN, AS TO WHETHER OR NOT THE MOTHERS SHOULD HAVE HER URINE TESTED FOR DRUGS?

MR. WHERRY: OBJECTION, LEADING.

MR. HOOD: DID YOU MAKE THE DECISION?
A. THAT'S THE PHYSICIAN'S DECISION, NOT MADE BY ME.
Q. DID YOU MAKE THE DECISION TO PLACE THE WOMEN IN THE CATEGORY THAT MADE HER FALL UNDER THE POLICY?
MR. WHERRY: OBJECTION, LEADING.
THE COURT: I DON'T THINK IT'S LEADING. I'LL PERMIT IT.
A. THE PHYSICIANS MADE THE DETERMINATION AS TO WHO WAS TO BE TESTED.

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Q. OKAY. AND IN YOUR ROLE, ONCE A PATIENT WAS REFERRED TO SUBSTANCE ABUSE, WAS YOUR ROLE TO MAKE SURE THEY WENT TO SUBSTANCE ABUSE?
THE COURT: THAT QUESTION IS LEADING, MR. HOOD.
Q. (BY MR. HOOD, CONTINUING)AS TO SUBSTANCE ABUSE, WHAT WAS YOUR ROLE?
A. MY ROLE WAS WHEN A PERSON WAS IDENTIFIED AS TESTING POSITIVE, TO TALK TO THEM AND MAKE THE REFERRAL TO SUBSTANCE ABUSE. SUBSTANCE ABUSE THEN EVALUATED THEM AND DETERMINED WHAT TYPE TREATMENT THEY WERE TO HAVE. IF THE PERSON FAILED IN TREATMENT, ACCORDING TO THE POLICY, THEY WERE TO NOTIFY

ME. I DID NOT ROUTINELY CALL ON EVERY PATIENT TO SEE WHAT WAS GOING ON IN SUBSTANCE ABUSE.
Q. OKAY. OKAY. I'M GOING TO COME BACK TO YOUR OTHER ROLE WITH REGARD TO THE FIRST STEPS OF INTERVIEWING THE PATIENT AND GET A HISTORY AND SO FORTH IN JUST A MINUTE. I FIRST WANT TO ASK YOU ABOUT SOME SPECIFIC THINGS, MS. BROWN.
FIRST OF ALL, IN THE CONTEXT OF THIS POLICY, HAVE YOU EVER SAID THAT MIXING OF RACES IS AGAINST GOD'S WAY?
A. I - THAT IS MY PERSONAL BELIEF THAT WAS TAUGHT TO ME BY MY PARENTS. I HAVE, NEVER SAID THIS IS RELATED TO THIS POLICY.
Q. OKAY. HAVE YOU EVER SAID THAT RELATED TO THIS POLICY ALL BLACK PEOPLE SHOULD BE STERILIZED?
A. I HAVE NEVER SAID THAT.

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Q. HAVE YOU EVER SAID THERE WAS AN EPIDEMIC OF COCAINE USE IN THE BLACK COMMUNITY?
A. I HAVE NEVER SAID THAT.
Q. HAVE YOU EVER SAID THEY BETTER ARREST A WHITE WOMEN SOON OTHERWISE THEY WILL THINK I'M A RACIST?
A. I NEVER SAID THAT.
Q. MS. BROWN, ARE YOU A RACIST?
A. NO.
Q. NOW, LET'S TALK ABOUT THIS SPECIFIC PLAINTIFF.

MR. HOOD: I WOULD LIKE TO HAND THE WITNESS THE MEDICAL RECORDS OF ALL OF THE PLAINTIFFS THAT ARE IN EVIDENCE. AND I BELIEVE ONE PLAINTIFF'S RECORDS, SINCE THE PLAINTIFF WASN'T CALLED, MS. HALE, IS NOT IN EVIDENCE, AND I MOVE THOSE IN EVIDENCE.

MS. SHOWERS: DEFENDANT'S 22.

THE COURT: I ASSUME WITHOUT OBJECTION AND WITH THE SAME UNDERSTANDING THAT WE MADE WITH THE OTHER RECORDS.

MR. WHERRY: YES, SIR.

Q. (BY MR. HOOD, CONTINUING) WHILE WE'RE GETTING - WHILE BARBARA IS GETTING THE MEDICAL RECORDS ORGANIZED TO PASS UP TO YOU OF EACH OF THE TEN PLAINTIFFS, AS THE CASE MANAGER UNDER THIS POLICY, MS. BROWN, DID YOU HAVE RESPONSIBILITY WITH REGARD TO PROVIDING CHILD CARE FOR THESE COCAINE MOTHERS?

A. THAT WAS NOT MY RESPONSIBILITY.

Q. DID YOU HAVE RESPONSIBILITY WITH REGARD TO PROVIDING THEM

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WITH TRANSPORTATION TO SUBSTANCE ABUSE?

A. THAT WAS NOT MY RESPONSIBILITY. IF A WOMEN SAID THAT SHE HAD PROBLEMS I WOULD MAKE A REFERRAL TO THE SOCIAL WORKER AT THE MEDICAL UNIVERSITY.

Q. WHILE SHE IS GETTING THOSE TOGETHER, AGAIN, TELL THE JURY WHAT IS GIVEN TO A WOMEN WHO'S HAD A BABY WHEN SHE IS DISCHARGED, A DISCHARGE KIT?
A. WE HAVE A BAG, IT SAYS MY PERSONAL BELONGINGS ON IT. IT USED TO BE IN BLUE WRITING. I THINK WE NOW USE PURPLE WRITING. AND WHENEVER A MOTHER IS DISCHARGED FROM THE HOSPITAL, SHE IS GIVEN PERI PADS, SHE IS GIVEN A SQUIRT BOTTLE. IT'S JUST A CLEAR PLASTIC BOTTLE TO USE IN RINSING THEMSELVES. THEY'RE GIVEN O.B. SPONGES, SANITARY BELTS AND MESH PANTIES. ANY MEDS THAT ARE IN THE ROOM. AND IF THEY NEEDED A SITZ BATH, THEY WOULD BE GIVEN THE PORTABLE SITZ BATH TO TAKE WITH THEM. THEY WOULD BE GIVEN THEIR HYGIENE KIT, WHICH IS A PLASTIC BUCKET WITH TOOTHPASTE, AN EMERSON BASIN AND TOOTHBRUSH AND SOME PERSONAL BELONGINGS. PACKAGING UP BELONGINGS.
Q. IS THIS KIT GIVEN TO EVERY WOMEN WHO DELIVERS A BABY AT THE MEDICAL UNIVERSITY, TO YOUR KNOWLEDGE?
A. YES, IT IS.
Q. WHETHER THEY PAID FOR THE MEDICAL UNIVERSITY, OR MEDICAID OR MEDICARE HAS PAID FOR IT OR WHOEVER?
A. WE DON'T GIVE SERVICES BASED ON A PERSON'S ABILITY TO

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PAY. EVERYONE RECEIVES THE SAME TREATMENT.
Q. AND WITH REGARD TO WHEN YOU TALK TO THESE PATIENTS AND GOT A SOCIAL HISTORY FROM THEM, IF YOU RECORDED THAT THE FATHER OF THE BABY WAS ONE RACE - ONE RACE OR ANOTHER, WHY DID YOU DO THAT?
A. AS PART OF THE NURSING HISTORY THAT WE HAD TO TAKE, WE WERE CONCERNED ABOUT SICKLE CELL DISEASE AND IF THE - IF WAS A DIFFERENT RACE THAT WOULD PLAY A PART INTO IT. THE BABY WAS UP FOR ADOPTION, THAT WAS ONE OF THE ADOPTION QUESTIONS THAT WAS ASKED WHAT WAS THE RACE OF THE FATHER.
Q. AND WHEN YOU HAD THE ADOPTION SITUATION, WHAT WERE THE INITIALS YOU WOULD PUT ON THE CHART ABBREVIATION?
A. BABY UP FOR ADOPTION, BUFA.
Q. AND DID YOU, MS. BROWN, IN APPLYING THE POLICY, CARE WHAT RACE THE BOYFRIEND OR SPOUSE WAS?
A. NO, I DIDN'T. I DETERMINED THE RACE OF EVERY PATIENT THAT I TOOK CARE ABOUT THE FATHER OF - IF IT WAS IN RELATION TO THE CHILD.
Q. DID YOU APPLY THIS POLICY ANY DIFFERENTLY TO A WHITE OR TO A BLACK?

A. ALL PATIENTS WERE TREATED THE SAME.
Q. OKAY. AND LET'S GO THROUGH WHAT YOUR ROLE WAS AS THE CASE MANAGER. AND BY THE WAY, THIS WAS AS - AT THIS TIME, '89 AND '90, DID YOU HAVE OTHER ROLES AS A NURSE AT THE MEDICAL UNIVERSITY?

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A. I WAS THE O.B. OUTCOME MANAGER. I TOOK CARE OF PATIENTS WHO WERE IN PRE-TERM LABOR, I TOOK CARE OF PATIENTS WHOSE BABIES HAD DIED. I TOOK CARE OF PATIENTS WITH DIABETES TO MAKE SURE THAT ALL OF THEIR CARE WAS TAKEN CARE OF. I TOOK CARE OF PATIENTS WHO TRIED SUICIDE. I GOT CALLED TO ANY HIGH RISK OBSTETRICAL PROBLEM OR ANY PSYCHOSOCIAL PROBLEM AS A PART OF THE TEAM TO DO MY PART OF THE NURSING EVALUATION. AND THEN TO HELP COORDINATE WITH THE PHYSICIANS AND SOCIAL WORKERS AND THE DIETICIANS AND PHYSICAL THERAPISTS, YOU KNOW, EVERYONE THAT WAS NEEDED TO MAKE SURE THAT THIS PATIENT HAD ALL OF THE CARE. THE PARAPLEGIC, YOU KNOW , THAT WE GOT HER IN REHAB SO THAT SHE COULD LEARN TO TAKE CARE OF HER CHILD FROM A WHEELCHAIR. PATIENTS WERE GIVEN MY CARD WHEN THEIR BABY DIED

AND I WOULD BE THE PERSON THAT THEY COULD CALL AT NIGHT OR ON THE WEEKEND OR WHATEVER WHEN THEY NEEDED TO TALK TO SOMEONE.

Q. WERE THESE ALL DUTIES OVER AND BEYOND IN ADDITION TO YOUR CASE MANAGEMENT JOB UNDER THIS POLICY?

A. THAT - THE - YES, IT WAS. I MEAN, IT WAS JUST PART OF THE CASE MANAGER. AND THE PATIENTS THAT WERE ON DRUGS WERE A SMALL PORTION OF THE PATIENTS THAT I HAD TO PROVIDE CARE FOR.

Q. BY THE WAY, THIS INTERAGENCY POLICY, WAS IT APPROVED BY THE HOSPITAL EXECUTIVE COMMITTEE?

A. YES, IT WAS.

Q. WAS THE ADOPTION OF THIS POLICY ANY DIFFERENT THAN THE OTHER NORMS OF POLICIES ADOPTED AT THE MEDICAL UNIVERSITY, AS

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FAR AS YOU WERE AWARE OF, FOR A NURSE?

A. IT FOLLOWED NORMAL PROCEDURES AS FAR AS I WAS AWARE OF.

Q. WAS THIS YOUR POLICY, MS. BROWN? WAS THIS SOMETHING - WAS THIS YOUR IDEA THAT THE MEDICAL UNIVERSITY CAME UP WITH THIS POLICY?

A. NO, I DIDN'T WRITE THIS POLICY.

Q. NOW, LET'S GO THROUGH YOUR ROLE IN MEETING EACH OF THESE PATIENTS AND DOING AN ASSESSMENT. JUST PICK UP A STACK AND

LET'S GO THROUGH THEM, IT DOESN'T MATTER WHAT ORDER THEY'RE IN.

WHO IS THE FIRST ONE?

A. PATRICIA WILLIAMS.

Q. OKAY. PATRICIA WILLIAMS. PLEASE TURN TO THE PROGRESS NOTE.

MR. HOOD: YOUR HONOR. THESE ARE IN EVIDENCE. THESE ARE HER RECORDS OF TALKING WITH THIS PATIENT. WHAT I ASKED HER TO DO IS READ WHAT SHE WROTE DOWN.

A. DATE. WHICH DATE?

Q. YES, MA'AM. 1/15/92?

A. 1/15/92. "TALKED TO PATIENT ABOUT POSITIVE URINE DRUG SCREEN FOR COCAINE. PATIENT ADMITS TO USING COCAINE DURING PREGNANCY. PATIENT STATES SHE BEGAN USING COCAINE AT AGE 38, DESCRIBES USE AS SOCIAL. PATIENT GIVEN INFORMATION FOR PROTOCOL. PATIENT HAS APPOINTMENT WITH CHARLESTON COUNTY SUBSTANCE ABUSE JANUARY THE 22, 1992, AT 4 P.M. LETTER FROM

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SOLICITOR SIGNED. COPY IS IN MY OFFICE."

Q. ALL RIGHT. AND LET'S LOOK AT YOUR RECORDING ON JANUARY THE 30, '92. CASE MANAGER'S NOTES SIGNED BY YOU.

A. "REVIEWED WITH PATIENT HARMFUL EFFECTS OF COCAINE ON

PATIENTS AND FETUS AS WELL AS LEGAL RISK IF PATIENT CONTINUES TO USE DRUGS AND DOES NOT ENTER INTO TREATMENT. PATIENT STATES SHE HAS COMPLETED MEDICAID APPLICATION. PATIENT HAS AN APPOINTMENT ON 2-25-92 AT 4 P.M. WITH GLENDA BROWN AT CHARLESTON COUNTY SUBSTANCE ABUSE."

Q. OKAY. ON FEBRUARY 24, '92 AS THE CASE MANAGER YOU WROTE?

A. "TALKED TO PATIENT AT LENGTH ABOUT CONTINUED DRUG ABUSE AND THE MEDICAL RISKS TO THE PATIENT AND THE FETUS AS WELL AS THE LEGAL RISKS. PATIENT ENCOURAGED TO ATTEND INPATIENT TREATMENT BUT STATES THAT SHE CAN KICK THE PROBLEM." AND I HAVE IN QUOTES KICK THE PROBLEM. MEANS IT'S A DIRECT QUOTE FROM HER. "ON HER OWN."

"PATIENT STATES HER CONTINUED DRUG ABUSE IS RELATED TO LACK OF CONCERN ON MUSC'S PART. PATIENT ASKED WHAT WE CAN DO. PATIENT SAID IF WE CARED, SHE WOULD STOP USING DRUGS. EXPLAIN TO PATIENT WE, IN PARENTHESIS MUSC, WANTED THE BEST FOR THE PATIENT AND UNBORN CHILD AND THAT WE WERE WILLING TO ASSIST THE PATIENT IN RECEIVING TREATMENT FOR HER DRUG PROBLEM BUT THAT PATIENT MUST BE WILLING TO ACCEPT SHE HAS A PROBLEM AND THAT SHE MUST WANT THE TREATMENT FOR HERSELF AND UNBORN

CHILD. PATIENT UNDERSTANDS THE MEDICAL AND LEGAL RISKS FOR

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CONTINUED DRUG ABUSE. DETECTIVE WARING WITH CHARLESTON CITY POLICE NOTIFIED ABOUT CONTINUED DRUG ABUSE ACCORDING TO HOSPITAL POLICY."

Q. AND THAT'S SIGNED BY YOU?

A. SIGNED BY ME.

Q. AND THE NEXT ENTRY BY YOU IS 3-10-92. AND WHAT DO YOU RECORD THERE?

A. "PATIENT WELL KNOWN TO ME BECAUSE OF CONTINUED DRUG ABUSE DURING PREGNANCY. JAMIE HAMILTON SOCIAL WORKER MADE REFERRAL TO DSS. WILL AWAIT URINE DRUG SCREEN ON INFANT FOR IC PATIENT."

Q. MS. BROWN; AS TO THIS PATIENT, MS. WILLIAMS, DO YOU RECALL REFUSING TO ALLOW HER TO SEE HER COUSIN?

MR. WHERRY: OBJECTION, LEADING.

A. I NEVER REFUSED TO LET THE PATIENT SEE ANY FAMILY MEMBERS.

THE COURT: WHAT?

MR. WHERRY: MAY I REQUEST A RULING BEFORE THE WITNESS ANSWERS THE QUESTION?

THE COURT: I WAS THINKING ABOUT IT. I'LL PERMIT THE QUESTION. I DON'T KNOW HOW - YOU KNOW, YOU CAN ASK

LEADING QUESTIONS. I THINK THE RULE SAYS WHERE THEY'RE NECESSARY, AND I DON'T KNOW HOW HE CAN ADDRESS A SPECIFIC PIECE OF EVIDENCE SUCH AS THAT THAT WAS BROUGHT OUT BY THE PLAINTIFF WITHOUT DOING IT IN A LEADING FASHION.

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Q. (BY MR. HOOD, CONTINUING) YES, MA'AM, AS TO THE COUSIN?
A. I'M SORRY?
Q. DID YOU REFUSE TO ALLOW HER TO SEE HER COUSIN?
A. I NEVER REFUSED TO LET ANYONE SEE ANY OF THEIR FAMILY.
Q. DID YOU HAVE ANY REASON TO REFUSE TO LET A PATIENT SEE THEIR FAMILY?
A. THAT - NO. I WOULDN'T DO THAT.
Q. IF THIS PATIENT CLAIMED THAT SHE WAS GIVEN NOTHING IN THE WAY OF MEDICAL SUPPLIES WHEN SHE WAS DISCHARGED, WOULD THAT HAVE OCCURRED?
A. THAT DID NOT OCCUR ON ANY PATIENT THAT I WAS THERE FOR. YOU KNOW, THEY WERE GIVEN ALL OF THEIR - ALL OF THEIR PERI PADS. IN FACT. WE ACTUALLY PUT EXTRA PERI PADS IN THERE AND EVERYTHING WAS PUT IN THAT BAG AND IT WAS HANDED TO THEM AND TO THE - AND IN FRONT OF THE POLICE OFFICER.
Q. OKAY. THAT'S MS. WILLIAMS. LET'S GO TO THE NEXT ONE YOU

HAVE.
THE COURT: IT'S 11:30. LET'S GO ON AND TAKE A BREAK. LET'S TAKE ABOUT FIFTEEN OR TWENTY MINUTES, LADIES AND GENTLEMEN.11:30 A.M.
(WHEREUPON, A BREAK WAS TAKEN OFF THE RECORD.)
(JURY ENTERS AT 12 NOON.)
Q. (BY MR. HOOD, CONTINUING) OKAY. WE GOT THROUGH WILLIAMS, LET'S GO TO THE NEXT ONE. WHO IS THE NEXT ONE IN YOUR STACK?

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A. THERESA JOSEPH.
MR. WHERRY: MAY I HAVE A SIDEBAR, YOUR HONOR.
THE COURT: CERTAINLY.
(SIDEBAR AS FOLLOWS:)
MR. WHERRY: WITH THE JOSEPH RECORDS, WE HAVE A CONFIDENTIALITY MOTION FILED. THIS IS THE WOMAN WITH THE VERY SERIOUS HEALTH PROBLEM.
THE COURT: NOT QUITE SO LOUD.
MR. WHERRY: BACK AT MY TABLE I HAVE A DOCTOR'S LETTER, WHICH I'LL HAND UP TO THE COURT, WHICH I COULD BRING UP SAYING SHE IS HOSPITALIZED NOW, VERY SICK AND MAY NOT SURVIVE. BUT AT LEAST WITH RESPECT TO THE DIGNITY OF THE PATIENT, HER PARTICULAR MEDICAL PROBLEM, I THINK OUGHT NOT BE

REFERRED TO IN ANY WAY, AS MY MEMORY SERVES ME, AND YOU CAN LOOK AT THE SIZE OF THE RECORD.

THE COURT: WHAT ABOUT THAT, DO YOU PLAN TO GO INTO THAT? MY UNDERSTANDING IS THAT SHE HAS TESTED POSITIVE FOR HIV. DO YOU PLAN TO GO INTO THAT?

MR. HOOD: YOUR HONOR, JUST LOOKING AT HER NOTES, I DON'T KNOW WHETHER IT'S IN HER NOTES OR NOT.

THE COURT: WE WILL HAVE TO GET MS. SHOWERS UP HERE BECAUSE IF YOU' DON'T KNOW SHE WILL.

MR. HOOD: I'M LOOKING AT THEM. SHE WOULD KNOW.

MR. WHERRY: HERE IS A CERTIFICATE OR LETTER FROM HER DOCTOR ABOUT HER MEDICAL CONDITION.

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MR. HOOD: WE HAVE ALSO SUBPOENAED HER CURRENT CHART. IT HASN'T ARRIVED YET.

THE COURT: JUST TELL ME WHETHER YOU'RE PLANNING ON PUTTING THAT IN?

MR. HOOD: YES, SIR. NO, WE WERE NOT PLANNING ON PUTTING IT IN. I WANT TO MAKE SURE THAT IT'S NOT IN HERE. IF IT IS, I CAN ASK HER NOT TO READ IT.

MS. SHOWERS: THERE MIGHT BE ONE WHEN SHE SIGNED OUT, BUT HE CAN STOP.

MR. HOOD: WHERE?

MS. SHOWERS: NOT ON THIS ADMISSION.
THE COURT: OKAY.
MS. SHOWERS: WE HAVE LEFT IT OUT.
THE COURT: I DON'T KNOW OF ANY REASON WHY YOU WOULD WANT TO BRING IT OUT. IF IT IS, WE'LL DISCUSS IT.
MR. HOOD: NO, WE DON'T CARE.
MAY I TELL THE WITNESS IN CASE I MISSED IT?
Q. (BY MR. HOOD, CONTINUING) OKAY, MS. BROWN, THIS IS PLAINTIFF JOSEPH. AND IF YOU WILL REFER TO JUNE 6, '91, YOUR CASE MANAGER NOTE.
A. I'M SORRY?
Q. 6/6/91.
A. YOU WANT ME TO READ THIS?
Q. YES, MA'AM.
A. 6/6/91. "LATE ENTRY. PATIENT SEEN AT 5:30 P.M. AND I

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DISCUSSED PATIENT'S DRUG USAGE AND HARMFUL EFFECT OF DRUG USAGE TO THE PATIENT AND HER UNBORN CHILD. PATIENTS ADMITS IT TO IV HEROIN AND COCAINE USE. PATIENT WOULD NOT GIVE DETAILED HISTORY ON USE, I.E. NUMBER OF TIMES A WEEK OR LENGTH OF TIME USED. PATIENT SAID SHE WANTED TREATMENT BUT THAT SHE COULD STOP. EXPLAINED TO PATIENT THAT WE WOULD TRANSFER HER FOR

SUBSTANCE ABUSE TREATMENT AS WELL AS CONTINUE TREATMENT FOR CELLULITIS. WILL SHOW PATIENT VIDEO AND HAVE PATIENT SIGN LETTERS IN POLICY ON FRIDAY BEFORE TRANSFER TO MUSC PSYCHIATRIC INSTITUTE. PATIENT ASKED NUMEROUS QUESTIONS ABOUT TRANSFER TO THE PSYCHIATRIC INSTITUTE AND THE PROGRAM SHE SAW ON TV WITH THE SOLICITOR. EXPLAINED TO PATIENT IF SHE RECEIVED SUBSTANCE ABUSE TREATMENT THAT SHE WOULD NOT BE IN TROUBLE WITH THE LEGAL SYSTEM."

Q. WHAT WAS THE CELLULITIS ON HER FOOT FROM?

A. SHE USED IV HEROIN AND COCAINE, AND REPEATED USES INFLAMED THE VEIN AND CAUSED HER FOOT TO GET REALLY INFECTED. OR LEG.

Q. ALL RIGHT. AND THE NEXT ENTRY ON 6/7/91 BY YOU MS. BROWN ON THIS PATIENT?

A. INFORMED BY NURSES THAT PATIENT HAD LEFT AMA.

Q. WHAT DOES AMA MEAN?

A. LEFT THE HOSPITAL AGAINST MEDICAL ADVICE. "PHYSICIANS TRIED TO TALK HER INTO STAYING AND SHE REFUSED TO STAY."

Q. OKAY.

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A. "TELEPHONED PATIENT AND TRIED TO CONVINCE PATIENT TO

RETURN TO HOSPITAL FOR TREATMENT OR HER CELLULITIS AS WELL AS TREATMENT FOR DRUG ABUSE PROBLEM. EXPLAINED TO THE PATIENT THAT FAILURE TO TREAT CELLULITIS FOR RESULT IN" - COULD RESULT - SAYS, "FOR RESULT OF LOSS OF HER FOOT AS WELL AS COULD RESULT IN HER DEATH. PATIENT SAID SHE HAD MADE UP HER MIND TO STOP USE OF DRUGS AND SHE COULD. PATIENT SAID SHE WOULD GO TO PHYSICIAN FOR TREATMENT OF HER FOOT. EXPLAINED TO PATIENT AFTER ALL ATTEMPTS - EXPLAINED TO PATIENT AFTER ALL ATTEMPTS TO HAVE PATIENT RETURN TO THE HOSPITAL FOR TREATMENT, THAT FAILURE TO ENTER SUBSTANCE ABUSE TREATMENT AND CONTINUED USE OF DRUGS COULD RESULT IN PATIENT BEING ARRESTED. PATIENT SAID SHE WOULD STAY AT HOME, STAY OFF DRUGS AND TAKE CARE OF HER SIX-YEAR-OLD. WILL HAVE SUZANNE J. WITTSCHEN, SOCIAL WORKER NOTIFY CHARLESTON COUNTY DSS PROTECTIVE SERVICES."

Q. OKAY. SIGNED BY YOU?

A. SIGNED BY ME.

Q. OCTOBER THE 18, 1991, AS THE CASE MANAGER, YOU WROTE WHAT ABOUT MS. JOSEPH?

A. WHICH DATE DID YOU SAY?

Q. 10/18/91.

A. "TALKED TO PATIENT ABOUT RECENT DRUG USAGE. PATIENT STATES SHE HAS BEEN USING TWENTY DOLLARS A DAY OF COCAINE A

DAY AND TWENTY-FIVE DOLLARS OF HEROIN A DAY IV."

I DON'T THINK I AM SUPPOSED TO READ ANYTHING ELSE.

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Q. I THINK THAT'S OKAY. I THINK THAT'S OKAY. YOU'RE JUST TALKING ABOUT - "EXPLAINED TO PATIENT THAT INFANT WOULD."

A. THAT OKAY?

Q. YES, THIS IS WHAT YOU WROTE AND WHAT YOU EXPLAINED TO HER.

A. OKAY. "EXPLAINED TO PATIENT THAT INFANT WOULD GO TO THE NICU," WHICH MEANS NEONATAL INTENSIVE CARE UNIT AND PROBABLY GO THROUGH WITHDRAWAL. PATIENT ASKING QUESTIONS ABOUT BEING ARRESTED. EXPLAINED TO PATIENT THAT I COULD NOT ANSWER THAT QUESTION."

Q. OKAY. THANK YOU. NOW THE THREE THAT WE HAVE DONE, LET ME GET THOSE OUT OF WAY SO MS. JOSEPH, MS. WILLIAMS AND WHOEVER THE OTHER ONE WAS. THIS ONE HERE.

YOU HAVE DONE WILLIAMS. AND IS ALL OF THIS JOSEPH?

A. THIS IS JOSEPH'S.

Q. OKAY. WHAT IS THE NEXT ONE?

A. PAULA S. HALE.

Q. OKAY. MS. HALE. IS THAT HER NAME, H A L E?

A. H A L E.

Q. SHE HAD - I DON'T BELIEVE SHE HAS TESTIFIED HERE, EITHER. GIVE ME A MINUTE. LOOK AT YOUR NOTE, PLEASE, OF 10/2/89 OF MS. HALE.
A. OKAY.
Q. TELL US WHAT IT SAYS WHEN YOU FIND IT.
A. I DON'T HAVE THAT MEDICAL RECORD UP HERE.

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Q. 10/2/89.
ANY OTHER RECORD ON HALE SOMEBODY. LET'S PUT HER ASIDE AND COME BACK TO HER.
WE GOT A COPY, LET'S JUST READ IT AND THEN WE'LL GET THE ORIGINAL. OKAY?
A. "TALKED TO MOTHER OF BABY WHO ADMITS TO SMOKING COCAINE BEFORE PREGNANCY AS WELL AS DURING PREGNANCY. MOTHER, BABY WAS AT PARTY AND SAID THAT SHE SMOKED COCAINE THE NIGHT SHE WENT INTO LABOR. IN FACT," AND I HAVE IT IN CHART MOB WHICH STANDS FOR MOTHER OF BABY, IT'S SHORTHAND, "STATES THE COCAINE PROBABLY CAUSED THE LABOR. MOTHER OF BABY DESCRIBES HERSELF AS A PARTY USER ONLY." THAT'S IN QUOTES. "NOT SOMEONE THAT IS ADDICTED TO COCAINE. MOTHER OF BABY STATES SHE LIVES WITH HER GRANDFATHER AND THAT THEY HAVE ALL THE SUPPLIES NEEDED FOR

THE BABY. MOTHER OF BABY PLANS TO BEGIN PICKING UP HER WIC FOR THE INFANT."

Q. WHAT IS WIC?

A. WOMEN AND INFANT CHILDREN. THAT'S WHENEVER YOU GET FORMULA FOR THE BABY, MILK, CHEESE, CEREAL AND DRIED BEANS EVERY MONTH FOR THE MOTHER.

Q. OKAY.

A. "STRESS TO PATIENT," IN PARENTHESIS, MOB FOR MOTHER OF THE BABY, "THE IMPORTANCE OF FOLLOW-UP CARE FOR THE INFANT. DISCUSSED WITH PATIENT IMPORTANCE OF FEEDING AND HOLDING INFANT. MICHELLE KINSLEY REQUESTED TO MAKE REFERRAL TO DSS

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PUBLIC SERVICE. MOTHER OF BABY STATES SHE DID NOT HAVE PRENATAL CARE BECAUSE SHE DOES NOT LIKE NEEDLES. THIS IS DATED 10/2/89." SIGNED BY SHIRLEY S. BROWN, CASE MANAGER.

Q. AND 12/14/1990. WOULD YOU READ THAT, PLEASE?

A. "PATIENT ADMITS TO USE OF COCAINE. STATES SHE BEGAN USING CAVIAR AROUND 24 YEARS OF AGE. PATIENT DESCRIBES USE AS RECREATIONAL. ON WEEKENDS ONLY - ONLY ON WEEKENDS AT PARTIES. PATIENT GIVEN INFORMATION PER PROTOCOL. LETTER FROM SOLICITOR SIGNED. COPY IS IN MY OFFICE. APPOINTMENT WITH

CHARLESTON COUNTY SUBSTANCE ABUSE JANUARY THE 3, 1991, AT TEN A.M. PATIENT HAS HAD INVOLVEMENT WITH THE LEGAL SYSTEM AND DSS PROTECTIVE SERVICES. PATIENT INFORMED THAT CHARLESTON COUNTY DSS PS, WHICH IS PROTECTIVE SERVICES, WOULD BE NOTIFIED. INFORMED LYNN FREDERICKS SOCIAL WORKER OF POSITIVE URINE DRUG SCREEN AND REQUESTED REFERRAL BE MADE TO DSS PUBLIC - PROTECTION SERVICES. SHIRLEY B. BROWN, RNNM. ADDENDUM, PATIENT HAS APPLIED FOR MEDICAID, AFFIDAVIT C, WHICH IS AID FOR DEPENDENT CHILDREN FOOD STAMPS AND PLANS TO APPLY FOR WIC. SHIRLEY B. BROWN, RNNM."

Q. OKAY. AND THAT'S MS. HALE. WHICH IS THE NEXT ONE YOU HAVE?

A. THE NEXT.

Q. THE NEXT PLAINTIFF.

A. LORI GRIFFIN.

Q. OKAY. LOOK AT YOUR PROGRESS NOTES FOR MS. GRIFFIN,

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PLEASE. IT'S DATED 10/10/89.

A. "TALKED WITH PATIENT ABOUT HISTORY OF COCAINE ABUSE. PATIENT STATES SHE BEGAN USING COCAINE AT AGE 19 BUT STATES SHE HAD USED IT INFREQUENTLY UNTIL AGE 25. PATIENT STATES SHE WAS USING COCAINE WHEN SHE FOUND OUT THAT SHE WAS PREGNANT BUT

STATED THAT SHE CONTINUED USING COCAINE. CONFRONTED PATIENT WITH THE FACT THAT SHE HAD SAID DURING PRENATAL VISITS AND LAST ADMISSION TO THE HOSPITAL THAT SHE WAS NO LONGER USING DRUGS. PATIENT DID NOT RESPOND. PATIENT STATES SHE LAST USED COCAINE IN AUGUST OR SEPTEMBER. CONFRONTED PATIENT WITH THE FACT THAT SHE TESTED POSITIVE FOR COCAINE AND PATIENT STATES SHE KNEW.

ALSO CONFRONTED PATIENT WITH THE FACT THAT SHE HAD HAD TO HAVE USED COCAINE IN THE PAST COUPLE OF DAYS. PATIENT WOULD NOT TALK OPENLY ABOUT COCAINE USE. PATIENT LIVES WITH HER BOYFRIEND AND TWO CHILDREN AGES THREE AND FOUR. PATIENT STATES HER BOYFRIEND ALSO USES COCAINE. PATIENT STATES SHE KNOWS THE RISK OF COCAINE, THAT THE DOCTORS HAD TOLD HER BEFORE THAT IT COULD CAUSE THE BABY TO DIE PATIENT STATES SHE ALSO WATCHED 48 HOURS ON CHANNEL 5 ABOUT CRACK AND THE NEWBORN. DISCUSSED RISK OF COCAINE WITH PATIENT, I.E., ABRUPTIO PLACENTA, IUFD AND INCREASED RISK OF SIDS AND NEUROLOGICAL DAMAGE."

Q. WHAT IS IUFD?

A. INTRAUTERINE FETAL DEATH. MEANS THAT THE BABY COULD DIE

INSIDE OF HER.
Q. AND WHAT IS SIDS?
A. THAT'S COMMONLY REFERRED TO AS CRIB DEATH.
Q. OKAY. AND THE LAST SENTENCE?
A. "NOTIFIED FRANK CORNELEY, SOLICITOR UPON REQUEST OF DR. JONES."
Q. UPON REQUEST OF WHO?
A. DR. JONES.
Q. OKAY. AND THAT'S YOUR NOTE SIGNED BY YOU?
A. SHIRLEY B. BROWN, RNNM.
Q. OKAY. NOW, I THINK I HAVE GOT A QUESTION ABOUT MS. GRIFFIN. WITH REGARD TO HER ARRESTS, DID YOU - DID YOU PARTICIPATE IN THAT?
A. CAN I REFER TO THE CHART. I THINK I WAS PRESENT.
Q. OKAY.
A. I WAS PRESENT.
Q. YOU WERE PRESENT?
A. YES.
Q. DID ANYTHING UNUSUAL HAPPEN DURING THAT OCCASION?
A. I DON'T RECALL ANYTHING UNUSUAL.
Q. HOW WAS SHE TREATED?
A. WITH RESPECT AND DIGNITY, JUST LIKE ALL PATIENTS ARE TREATED.
Q. OKAY.
MR. HOOD: YOUR HONOR, AT THIS POINT I WOULD LIKE TO

* * *

CONSEQUENCES. SHOULD YOU LEAVE THE HOSPITAL AGAINST MEDICAL ADVICE NEITHER THE HOSPITAL NOR THE PRIMARY PHYSICIAN WILL BE RESPONSIBLE FOR ANY HARM THAT ACTION MAY CAUSE YOU OR ANY OTHER PERSON."

Q. THANK YOU, MA'AM. MAY I TAKE THAT BACK, PLEASE. THANK YOU.

NOW, MS. BROWN -

THE COURT: YOU CAN MOVE THE EASEL.

MR. WHERRY: YES, I WILL.

Q. (BY MR. WHERRY, CONTINUING) MS. BROWN, WHAT YOU HAVE JUST READ, PART OF 105, 105 IS, MS. BROWN, AN APPROVED DOCUMENT BY THE MEDICAL UNIVERSITY OF SOUTH CAROLINA, APPROVED BY WHATEVER COMMITTEE HAD TO APPROVE IT, FAIR?

A. THAT'S CORRECT.

Q. NOW LET'S GO BACK TO WHAT WE TALKED ABOUT AT LEAST WITH RESPECT TO THE PLAINTIFFS LORI GRIFFIN AND LAVERNE SINGLETON. WOULD YOU AGREE WITH ME THAT A DRUG SCREEN OR RESULTS OF LABORATORY ANALYSIS OF ONES' URINE IS MEDICAL INFORMATION?

A. YES, IT IS.

Q. AND IF IN FACT YOU RELAYED THAT INFORMATION ON TO ANYONE IT WOULD HAVE BEEN BECAUSE YOU GOT THE RESULTS OF THE LAB TESTS FROM THE MEDICAL UNIVERSITY OF SOUTH CAROLINA?

A. THAT IS CORRECT.

Q. OKAY. NOW, LET'S GO FORWARD - I'M SORRY.

MR. WHERRY: YOUR HONOR, I WOULD LIKE TO SHOW THE

**[SHIRLEY BROWN 28]**

WITNESS WHAT HAS BEEN MARKED AS EXHIBIT 106. PLAINTIFF'S 106 FOR TRIAL FOR IDENTIFICATION ONLY. I'M SHOWING MY ADVERSARY.

(PAUSE IN PROCEEDINGS.)

MR. HOOD: YOUR HONOR, AS TO THIS EXHIBIT WE HAVE AN OBJECTION TO ITS RELEVANCY.

THE COURT: LET ME SEE IT.

MR. WHERRY: I'M NOT OFFERING IT YET.

THE COURT: IF YOU'RE NOT OFFERING IT.

MR. WHERRY: NO, SIR, I'M NOT. I WANT TO SHOW IT TO THE WITNESS TO SEE IF SHE CAN MAKE IT RELEVANT.

Q. (BY MR. WHERRY, CONTINUING) MS. BROWN, YOU REFERRED TO EARLIER IN YOUR TESTIMONY A WRITING OF FIRST DRAFT OF A POLICY.

MS. BROWN, LET ME WITHDRAW THAT QUESTION AND I'LL LEAVE THE DOCUMENT THERE WITH YOU FOR A MOMENT. IT'S NOT WHAT I THOUGHT IT WAS.

DID THERE COME A POINT IN TIME, MS. BROWN, AT WHICH - AT WHICH YOU ATTENDED OR PARTICIPATED IN ANOTHER MEETING, A FURTHER DEVELOPMENT OF WHAT I WILL CALL THE INTERAGENCY

POLICY?
A. YES IT WAS.
Q. WITH RESPECT TO THE ONE THAT WAS ADOPTED IN OCTOBER OF '89, WERE THERE A LIST OF CRITERIA THAT WOULD LEAD TO THE HOSPITAL OBTAINING A UDS, URINE DRUG SCREEN?
A. YES, IT WAS.

**[SHIRLEY BROWN 29]**

Q. AND WOULD YOU TELL THE JURY, PLEASE, WHAT THOSE CRITERIA WERE THAT WOULD LEAD TO THE HOSPITAL RUNNING A UDS, A URINE DRUG SCREEN?
A. A PERSON HAD NO PRENATAL CARE.
Q. NO PRENATAL CARE?
A. CORRECT. IF THEY HAD LATE PRENATAL CARE, THAT WOULD BE AFTER 24 WEEKS GESTATION.
Q. LATE PRENATAL CARE?
A. IF THEY HAD INCOMPLETE PRENATAL CARE, I.E., THEY CAME IN ONE VISIT AND THEN DIDN'T COME BACK UNTIL JUST BEFORE THEY DELIVERED.
Q. INCOMPLETE PRENATAL CARE.
A. IF THEY CAME IN WITH AN ABRUPTO PLACENTA, THAT IS WHENEVER THE PLACENTA SEPARATES FROM THE INSIDE OF THE UTERUS WHICH CAN CAUSE THE BABY TO DIE AND OR PUT THE MOTHER'S HEALTH IN SERIOUS JEOPARDY.
IF SHE CAME IN AND HER BABY HAD DIED INSIDE OF HER KNOWN AS INTRAUTERINE FETAL DEATH.

Q. MS. BROWN, I PROMISE YOU I'M GOING TO LET YOU CONTINUE WITH THAT. WITH THE INTRAUTERINE FETAL DEATH THAT WOULD TRIGGER A UDS?
A. YES, IT WOULD.
Q. IF THEIR THERE WAS INTRAUTERINE FETAL DEATH, THE HOSPITAL, I TAKE IT THE HEALTH CARE PROFESSIONALS HAD NO FURTHER INTEREST IN PROTECTION OF THE FETUS, DID THEY? THE

**[SHIRLEY BROWN 30]**

BABY'S DEAD, THEY HAD NOTHING LEFT TO PROTECT, RIGHT?
A. BUT OUR URINE DRUG SCREENS WERE DONE TO LOOK FOR REASONS.
Q. I UNDERSTAND. CONTINUE WITH YOUR LIST AND THEN LET US RETURN TO THAT.
A. IF THEY WERE IN PRETERM LABOR.
Q. PRETERM LABOR.
A. IF - AND OF NO OBVIOUS CAUSE. IF A LADY HAD TWINS, TRIPLETS, A LONG HISTORY OF CERVICAL INCOMPETENCE OR SOMETHING LIKE THAT, SHE MIGHT NOT BE SCREENED.
INTRAUTERINE GROWTH RETARDATION. THAT'S WHEN THE BABY IS NOT THE SIZE THAT IT SHOULD BE AND THERE WAS NO OBVIOUS CAUSE FOR THAT.
AND UNEXPLAINED CONGENITAL ANOMALIES.
Q. WHICH I TAKE IT MEANS A BIRTH DEFECT?
A. A BIRTH DEFECT.

Q. OKAY. NOW, MS. BROWN, LET'S GO BACK TO THAT INTRAUTERINE FETAL DEATH. AND IN CONJUNCTION WITH THAT THE INTENT OF THE POLICY, THE REASON THAT WE DECIDED ON THIS POLICY, AT THE FIRST MEETING, WAS BECAUSE OF OUR CONCERN, AND AS MR. HOOD SAID IN HIS OPENING, FOR THE HEALTH AND SAFETY AND CARE OF THESE FETUSES AND SOON TO BE CHILDREN; FAIR?
A. THAT IS CORRECT.
Q. SO, HOW DID A TAKING A URINE SAMPLE FROM THE MOTHER OF A CHILD WHO WAS ALREADY DEAD, HOW DID THAT PROTECT UNBORN CHILDREN? IT DIDN'T, DID IT?

**[SHIRLEY BROWN 31]**

A. IT DIDN'T.
Q. WHEN WE GOT A POSITIVE URINE SCREEN ON THE UNFORTUNATE WOMEN WHO EXPERIENCED THE INTRAUTERINE DEATH, THAT LIKEWISE WAS TURNED OVER TO THE POLICE FOR HER TO BE ARRESTED, WASN'T IT?
A. NO, IT WASN'T.
Q. WHAT WAS DONE WITH IT? WHY DID YOU TAKE IT?
A. UNDER THE SOUTH CAROLINA LAW AS EXPLAINED TO ME BY THE LEGAL COUNSEL AT THE MEDICAL UNIVERSITY, THAT WAS A WRONGFUL DEATH AND HAD TO BE REPORTED TO THE MEDICAL EXAMINER. SO THE MEDICAL EXAMINER.

Q. I'M SURE, MS. BROWN, EVERYTHING THAT YOU JUST TOLD ME IS TRUE. WHAT DOES THAT HAVE TO DO WITH YOUR REPORTING OF THE INTRAUTERINE FETAL DEATH TO THE MEDICAL EXAMINER FOR HER EXAMINATION OF THE CAUSE OF DEATH, WHAT DOES THAT HAVE TO DO WITH YOU TAKING A URINE SCREEN OF THE UNFORTUNATE MOTHER?
NOTHING, DOES IT, MA'AM?
A. IT WAS THE POLICY.
Q. MS. BROWN, I UNDERSTAND THAT IT WAS THE POLICY. IT HAS NOTHING TO DO WITH FETAL PROTECTION, DOES IT?
A. NO, IT DOESN'T.
Q. THANK YOU. NOW -
MR. WHERRY: IF THE COURT WILL BEAR WITH ME FOR JUST A MOMENT.
Q. (BY MR. WHERRY, CONTINUING) WHILE MR. HOOD IS LOOKING AT

**[SHIRLEY BROWN 32]**

MARCH AND THAT THE PHYSICIANS EXPLAINED TO HER THE EFFECT OF COCAINE ON HERSELF AS WELL AS THE FETUS. PATIENT STATES SHE STOPPED USING COCAINE FOR ABOUT TWO MONTHS AND BEGAN USING COCAINE AGAIN BECAUSE OF SO MUCH PRESSURE. PATIENTS STATES SHE LAST USED COCAINE AROUND FIVE P.M. ON THURSDAY 10/12/89. DR. JONES IS AWARE."
Q. OKAY. AND YOU HAVE SAID DOCTOR SEVERAL TIMES IS AWARE.

WHAT IS THAT AN INDICATION OF THAT YOU WERE DOING?
A. I WOULD ALWAYS DISCUSS ANY CASE WITH THE PHYSICIAN TO DETERMINE WHAT NEEDED TO BE DONE.
Q. AND IF THIS PATIENT TESTIFIED THAT SHE LEFT THE HOSPITAL IN A HOSPITAL GOWN, HOW WOULD SHE HAVE BEEN DRESSED?
A. SHE WOULD HAVE LEFT IN TWO HOSPITAL GOWNS OR POSSIBLY THREE IF IT WAS COOL.
Q. OKAY. THE NEXT PLAINTIFF.
A. CRYSTAL FERGUSON.
Q. OKAY. IF I CAN GET YOUR NOTE OF 6/20/91. DID YOU OBTAIN A HISTORY FROM THIS PATIENT?
A. YES, I DID.
Q. OKAY.
A. "PATIENT GIVEN INFORMATION FOR COCAINE POLICY AND LETTER SIGNED FROM SOLICITOR. COPY IS IN MY OFFICE. PATIENT ADMITS TO THE USE OF COCAINE/CRACK. DENIES IV USE. PATIENT STATES SHE BEGAN USING COCAINE AUGUST THE 3, 1990, AND LAST USED SATURDAY JUNE 15, 1991. PATIENT BEGAN SMOKING CIGARETTES AND

**[SHIRLEY BROWN 33]**

MARIJUANA AT AGE 15 AS WELL AS DRINKING ALCOHOL, BEER AND WINE. PATIENT STATES SHE HAS DECREASED BEER CONSUMPTION TO SIX-PACK EVERY WEEK. PATIENT LIVED WITH HER HUSBAND WHO SHE

CLAIMS IS A DRUG ADDICT AND NOW HER TWO CHILDREN AGES 11 AND 10. PATIENT'S SISTER IS TAKING CARE OF CHILDREN WHILE PATIENT IS IN HOSPITAL. PATIENT IS RECEIVING UNEMPLOYMENT, WIC AND FOOD STAMPS. PATIENT HAS AGREED TO INPATIENT SUBSTANCE ABUSE TREATMENT AT MUSC PSYCHIATRIC INSTITUTE. DOCTOR TATE AWARE AND AGREES. PATIENT WILL BE ADMITTED TO MUSC PSYCH. INSTITUTE THIS P.M. IF MEDICALLY STABLE. SHIRLEY B. BROWN, RNNM."

Q. ULTIMATELY IF THIS PATIENT WAS ARRESTED, WERE YOU PRESENT AT THE TIME SHE WAS ARRESTED?

A. NO, I WAS NOT.

Q. IF SHE SAID THAT YOU WERE PRESENT, WOULD THAT BE CORRECT OR NOT?

A. I WAS NOT PRESENT WHEN SHE WAS ARRESTED.

Q. DOES THE CHART SHOW WHO THE CASE MANAGER WAS WHEN SHE WAS ARRESTED?

A. MELISIA HENRY.

Q. THE NEXT PLAINTIFF, PLEASE?

A. DARLENE NICHOLSON.

Q. OKAY. ACCORDING TO YOUR NOTE AS CASE MANAGER OF 12/17/93.

A. I'M SORRY?

Q. 12/17/93?

**[SHIRLEY BROWN 34]**

A. SHE HAS GOT SO MANY RECORDS I CAN'T FIND IT.

Q. OKAY.
A. 12/17/93?
Q. YES, MA'AM. DO YOU WANT TO TAKE MY COPY?
A. OKAY. I CAN'T FINE IT.
Q. THERE IS AN ENTRY FOR 2/17/94. IS THAT YOUR ENTRY?
A. I'M SORRY, DO WHAT?
Q. IS THAT YOUR ENTRY?
A. YES.
Q. AND THE DATE OF IT IS?
A. 12/17/93.
Q. OKAY.
A. OB CASE MANAGER NOTE. "SPOKE WITH MAXINE GAILLARD, COUNSELOR AT CHARLESTON COUNTY SUBSTANCE ABUSE REGARDING PATIENT'S CONTINUED POSITIVE DRUG SCREEN FOR COCAINE. MS. GAILLARD RECOMMENDED THAT PATIENT RECEIVE INPATIENT TREATMENT. WILL SEE PATIENT AT NEXT VISIT TO TALK TO PATIENT ABOUT INPATIENT TREATMENT AND MAKE ARRANGEMENT FOR INPATIENT SUBSTANCE ABOUT TREATMENT. SHIRLEY B. BROWN, RNNM.4"
SAME DAY THAT I DIDN'T KNOW THAT. I WAS GOING TO SEE HER THAT DAY. "O.B. CASE MANAGER NOTE 12/17/93. TALKED TO PATIENT ABOUT RISK RELATED TO COCAINE ABUSE AND FETAL WITHDRAWAL RELATED TO METHADONE USE. PATIENT STATES SHE WANTS TO STOP METHADONE AS SOON AS SHE DELIVERS: TALKED TO PATIENT ABOUT INPATIENT TREATMENT AND PATIENT AGREED TO INPATIENT

**[SHIRLEY BROWN 35]**

TREATMENT. ARRANGEMENTS MADE FOR PATIENT TO BE ADMITTED TO MUSC INSTITUTE OF PSYCHIATRY THIS P.M. INFORMED PATIENT ABOUT A BED AVAILABLE NOW. PATIENT STARTED WITH EXCUSES ABOUT NOT GOING INTO TREATMENT TILL MONDAY, THEN SATURDAY AFTER ONE P.M. THEN GIVE HER SEVERAL HOURS AND SHE WILL GO INTO TREATMENT. TALKED WITH DR. MALCOMB IN PSYCHIATRY WHO RECOMMENDED INVOLUNTARY COMMITMENT. EXPLAINED TO PATIENT THAT IF SHE REFUSED VOLUNTARY ADMISSION THAT. INVOLUNTARY COMMITMENT WOULD BE DONE. AFTER A LONG DISCUSSION WITH PATIENT AND HER BOYFRIEND, PATIENT AGREED TO VOLUNTARY ADMISSION TO MUSC IOP. PATIENTS STAYED SHE HAS NOT USED COCAINE IN SEVERAL WEEKS SINCE LAST POSITIVE COCAINE ON 12/3/93. PATIENT'S DRUG WAS POSITIVE FOR COCAINE TODAY. GAVE PATIENT INFORMATION REGARDING TRANSPORTATION TO MUSC IOP."

Q. IS THIS PATIENT TESTIFIED YOU FORCED HER OR PUSHED HER INTO SUBSTANCE ABUSE TREATMENT, WOULD THAT BE CORRECT?

A. I EXPLAINED TO HER WHAT DR. MALCOMB TOLD ME TO EXPLAIN TO

HER, SHE WOULD BE INVOLUNTARILY COMMITTED.
Q. OKAY. ALL RIGHT. DOES THAT CONCLUDE YOUR ENTRIES ON HER?
A. 2/17/94.
Q. OKAY. PLEASE READ THAT ENTRY BY YOU?
A. "PATIENT KNOWN TO ME BECAUSE SHE WAS SEEN IN DECEMBER OF '93. I DID NOT HAVE PATIENT SIGN LETTER FROM SOLICITOR'S OFFICE BECAUSE SHE WAS GOING TO BE INVOLUNTARILY COMMITTED TO

**[SHIRLEY BROWN 36]**

MUSC IOP. I TALKED WITH PATIENT AT LENGTH ABOUT HARMFUL EFFECTS OF COCAINE AND HEROIN TO PATIENT AND HER UNBORN CHILD. PATIENT STATES SHE HAS SEEN THE VIDEO ON SMOKING DRINKING AND DRUGS. PATIENT STATES PREGNANT WOMEN SHOULD NOT USE DRUGS." THAT'S IN QUOTES. "PATIENTS ADMITS TO USING COCAINE, CRACK, SINCE AGE 13, BUT STATES IN THE PAST YEAR SHE HAS LOST CONTROL AND LOST EVERYTHING EXCEPT HER KID BECAUSE OF DRUG USE. PATIENT STATES SHE BEGAN USING HEROIN AT AGE 27."
AND I WENT TO WRITE SOMETHING AND WROTE ON TOP OF IT MISTAKE, AND MY INITIALS WHICH MEANS -
Q. FINE.
A. BEGAN USING - LET ME START OVER AGAIN. "PATIENT STATES

SHE BEGAN USING HEROIN AT AGE 27 AND BEGAN USING METHADONE ABOUT FOUR AND A HALF YEARS AGO. PATIENT HAS BEEN INVOLUNTARILY COMMITTED TIMES TWO THIS PREGNANCY, AND STATES SHE VOLUNTARILY ENTERED MUSC IOP ON MONDAY. EXPLAINED TO PATIENT THAT DSS WOULD BE NOTIFIED AFTER THE INFANT WAS BORN. PATIENT STATES HER CHILDREN AGES 16, 12 AND 3 ARE BEING CARED FOR BY THEIR GRANDPARENTS. PATIENT STATES THE FATHER OF THE BABY IS ALSO USING HEROIN AND SHE DOES NOT PLAN ON LIVING WITH HIM BECAUSE SHE STATES SHE NEEDS TO FIND A DRUG FREE ENVIRONMENT. PATIENT READ LETTER FROM SOLICITOR'S OFFICE BUT REFUSED TO SIGN. COPY OF LETTER WITH STATEMENT OF PATIENT REFUSING TO SIGN LETTER IS ON FILE IN MY OFFICE MELISIA HENRY, RNNM. AND PRESENT FOR TALK WITH PATIENT."

**[SHIRLEY BROWN 37]**

Q. THANK YOU VERY MUCH. AND THE LAST PLAINTIFF IS MS. PEAR I BELIEVE.

THE COURT: WHAT WAS THE NAME OF THE LAST ONE?

MR. HOOD: NICHOLSON, YOUR HONOR.

THE COURT: WAS SHE EVER ARRESTED?

THE WITNESS: NO, SHE WASN'T.

MR. HOOD: SHE WENT INTO SUBSTANCE ABUSE AND WAS NOT ARRESTED?

THE WITNESS: THAT'S CORRECT.

MR. HOOD: GOOD.

Q. (BY MR. HOOD, CONTINUING) AND THE LAST ONE IS MS. PEAR. LET ME JUST GIVE YOU MY NOTES?

A. NO. WOULD YOU TAKE THESE BECAUSE I'M AFRAID THEY WILL FALL AND THEN IT WILL BE A MESS. THERE WERE A BUNCH OF RUBBER BANDS TRYING TO HOLD THEM TOGETHER.

Q. THANK YOU.

MR. HOOD: THIS IS WHAT SHE READ FROM. I'LL LET YOU HAVE IT.

DEPUTY CLERK: THANK YOU.

A. THESE ARE THERESA JOSEPH.

Q. I'M GOING TO ASK YOU ABOUT THAT IN JUST A MOMENT. DO YOU HAVE PEAR RIGHT THERE?

A. OKAY.

Q. GO BACK TO MS. NICHOLSON. WAS HER INVOLUNTARY COMMITMENT AFTER THIS LAWSUIT WAS BROUGHT IN '94?

**[SHIRLEY BROWN 38]**

A. SHE WAS - YEAH. SHE - THIS -

Q. THAT'S FINE. THAT'S ALL I WANT TO KNOW.

NOW, LET'S DO MS. PEAR.

A. ALL RIGHT.

Q. OKAY. IT'S 9/14/90 PLEASE. THE LAST ONE. TWO ENTRIES.

A. "THIS PATIENT IS WELL KNOWN TO ME BECAUSE OF POSITIVE

URINE DRUG SCREEN AND CONTINUED USE OF COCAINE DESPITE COUNSELING. PATIENT WAS ARRESTED FOR COCAINE ABUSE DURING PREGNANCY AND IS OUT ON BOND. TALKED TO PATIENT ABOUT TECHNIQUES USED TO HANDLE PROBLEMS ASSOCIATED WITH COCAINE AND GAVE PATIENT LETTER FROM THE NEONATOLOGY. STRESSED TO PATIENT THE IMPORTANCE OF CONTINUING WITH SUBSTANCE ABUSE TREATMENT. PATIENT INFORMED THAT DSS PROTECTIVE SERVICES WOULD BE NOTIFIED. PATIENT'S OTHER CHILDREN ARE NOT WITH PATIENT. PATIENT'S OLDEST CHILDREN ARE IN HER PARENTS' CUSTODY AND HER YOUNGEST CHILD IS IN FOSTER CARE WITH POSSIBLE CARE GOING TO THE FATHER OF THAT CHILD MOTHER. FATHER OF BABY IS CURRENTLY IN JAIL. SHIRLEY B BROWN, RNNM."

Q. YOU HAVE ANOTHER CASE MANAGER NOTE ON 8/31/90 FOR THIS PATIENT. AND IT SAYS -

A. "TALKED TO PATIENT ABOUT COCAINE." SORRY. "TALKED TO PATIENT ABOUT URINE TESTING POSITIVE FOR COCAINE. PATIENT DENIES USE AND IS NOT COOPERATIVE IN GIVING A DRUG HISTORY. REVIEWED WITH PATIENT PROBLEMS THAT CAN OCCUR TO PATIENT AND THE FETUS BECAUSE OF CONTINUED COCAINE USE. PATIENT STATES

SHE UNDERSTAND THE PROBLEM. REVIEWED WITH PATIENT SIGNS AND SYMPTOMS OF PRE-TERM LABOR AND NEED FOR BEDREST AND STOP USE OF COCAINE. PATIENTS STATES SHE IS CURRENTLY LIVING WITH HER UNCLE AND THAT HER CHILDREN LIVE WITH HER MOTHER. PATIENT STATES FATHER OF THE BABY IS IN JAIL."

NOW, WERE YOU INVOLVED IN THIS PATIENT BEING TURNED OVER TO OR DISCHARGED TO THE CITY POLICE?

A. I DON'T REMEMBER.

Q. OKAY.

A. I DON'T REMEMBER THIS PATIENT. IF THERE IS A NOTE IN THE CHART SAYING I WAS PRESENT, I WAS PRESENT. I DON'T REMEMBER HER SPECIFICALLY.

Q. OKAY. WELL I'M NOT GOING TO ASK YOU TO GO THROUGH IT. I DON'T THINK YOU WERE, BUT IF YOU REMEMBERED I WANT TO KNOW ONE WAY OR OTHER. DO YOU HAVE ANY RECOLLECTION ON HER ARREST?

A. I DON'T HAVE ANY RECOLLECTION ABOUT HER ARREST.

Q. I DON'T THINK IT'S NECESSARY. I PUT IN FRONT OF YOU THERESA JOSEPH'S RECORD. SHE HAS BEEN IN THE HOSPITAL MANY TIMES. AND WHAT I WOULD LIKE TO KNOW IS, ON THE PATIENT INFORMATION SHEET THAT SHE CHECKED IN AT REGISTRATION, WHAT DID SHE PUT DOWN AS HER RACE ON EACH OCCASION?

A. DO YOU WANT ME TO GIVE THE DATES AND SO ON?

Q. HER RACE?
A. ON HOSPITAL ADMISSION 6/5/91, WHITE.
Q. OKAY.

* * *

**[SHIRLEY BROWN 48]**

GOVERNMENT, THEIR APPLICATION FORM.
THE COURT: OKAY.
Q. (BY MR. WHERRY, CONTINUING) IN ANY EVENT, IT WAS AFTER THE INTERAGENCY POLICY BEGAN; ISN'T THAT RIGHT?
A. THAT'S CORRECT.
Q. AND THIS GRANT WAS TO FUND A CHANGE OR IMPROVEMENT IN THE TREATMENT MODALITIES AVAILABLE TO THE WOMEN WHO WERE THE SUBJECT OF THE POLICY, FAIR?
A. THAT IS CORRECT.
Q. NOW, MS. BROWN, GOING TO NEXT SIGNATURE ON WHAT HAS BEEN MARKED PLAINTIFF'S EXHIBIT 119, BECAUSE WE MAY OR MAY NOT HAVE HAD YOU TESTIFY BEFORE AS TO WHETHER OR NOT YOU RECOGNIZE THE HANDWRITING ON THE BOTTOM HALF OF THAT DOCUMENT AS BEING YOUR HANDWRITING?
A. THAT IS MY HANDWRITING.
Q. AND THAT DOCUMENT IS PART OF THE PATIENT RECORD, ISN'T IT?
A. YES, IT IS.
Q. AND THAT'S PART OF THE PATIENT RECORD, PARTICULARLY THE PROGRESS NOTES?
A. THAT IS CORRECT.

MR. WHERRY: YOUR HONOR, AT THIS POINT I MOVE DOCUMENT NUMBER 119 INTO EVIDENCE.

THE COURT: MARK IT IN EVIDENCE. I'M ASSUMING THAT IT'S THE 119 THAT WE HAVE TALKED ABOUT.

**[SHIRLEY BROWN 49]**

MR. HOOD: CAN I SEE WHAT IT IS.

YOUR HONOR, THIS IS ON A NON-PLAINTIFF SO WE WOULD OBJECT.

THE COURT: I OVERRULE THE OBJECTION.

MR. WHERRY: JUST BECAUSE THERE IS STILL A STICKER ON IT SAYING FOR IDENTIFICATION ONLY, I MOVE INTO EVIDENCE PLAINTIFF'S 120, 121, 122 AND 123. I THINK YOU RULED ON IT BECAUSE THE ID STICKER IS STILL ON IT.

MR. HOOD: OUR POSITION ON ALL OF THEM, THEY'RE JUST NON-PLAINTIFFS. I WANT THE RECORD CLEAR THAT THEY'RE NON-PLAINTIFF. AND UNDER 403.

THE COURT: I HAVE ALREADY RULED ON IT AND I HAVE OVERRULED THAT OBJECTION.

MR. HOOD: YES, SIR.

Q. (BY MR. WHERRY, CONTINUING) GET BACK TO THESE DOCUMENTS IN A MOMENT, MS. BROWN. THE - WITH RESPECT TO THE PLAINTIFF PATRICIA WILLIAMS, I THINK YOU TESTIFIED ABOUT SOME THINGS IN

HER MEDICAL RECORD. IN HER MEDICAL RECORDS - LET ME WITHDRAW THAT QUESTION.

IN FACT WITH PATRICIA WILLIAMS, YOU INFORMED HER IT IS REQUIRED THAT SHE HAVE A TUBAL LIGATION BEFORE LEAVING THE HOSPITAL; ISN'T THAT SO?

A. THAT IS NOT SO.

Q. DID SHE HAVE A TUBAL LIGATION?

A. I WOULD HAVE TO LOOK AT HER CHART TO SEE IF SHE HAD ONE.

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**[SHIRLEY BROWN 51]**

ONE THAT DID IT.

Q. WHEN YOU REPORTED A PATIENT TO THE CHARLESTON POLICE DEPARTMENT, DID YOU REPORT THE PATIENT'S RACE?

A. THEY NORMALLY ASKED THE RACE.

Q. SO I TAKE IT THEREFORE THE ANSWER TO THAT QUESTION IS YES?

A. IF THEY ASKED ME THE RACE I WOULD HAVE GIVEN THEM THE RACE.

Q. AND SO ASSUMING NO SLIP BETWEEN THE CUP AND THE LIP, THE RACE REPORTED ON THE CHARLESTON POLICE DEPARTMENT' RECORDS WOULD BE THE RACE REPORTED BY YOU IF IN FACT YOU WERE ASKED?

A. IF I WAS ASKED I WOULD HAVE REPORTED WHAT WAS IN HER RECORD.

Q. YES. YOU HAVE SEEN, HAVEN'T YOU, POLICE REPORTS ON WOMEN

THAT WERE ARRESTED PURSUANT TO THE POLICY, HAVEN'T YOU?
A. I HAVE SEEN THE ONES THAT WERE SHOWN TO ME IN DEPOSITION. I NEVER SAW A POLICE REPORT AFTER A PERSON WAS ARRESTED.
MR. WHERRY: MAY I HAVE THIS MARKED FOR IDENTIFICATION, PLEASE.
MR. HOOD: YOUR HONOR, IF THIS IS THE COMPLETE CITY OF CHARLESTON AND POLICE RECORDS ON THIS PERSON, WE HAVE NO OBJECTION. AS WE SAID BEFORE ABOUT OTHERS, WE HAVE THE COMPLETE RECORD, AND IN OUR CASE WE INTEND TO PUT THEM IN. I DON'T THINK COUNSEL CAN REPRESENT THIS IS FULL RECORD AND I

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**[SHIRLEY BROWN 56]**

PATIENT. HE WAS NEVER ONE OF MY PATIENTS. AND THAT IS SOMETHING THAT THE PATIENT TOLD ME. I COULDN'T RELY ON JUST THAT.
Q. YOU SAID THAT A COUPLE OF TIMES. LET ME CLEAR THAT UP. YOU WERE TOLD THAT IT WAS YOUR OBLIGATION AS A NURSE TO REPORT CRIMES THAT YOU PERCEIVED TO BE COMMITTED BY YOUR PATIENT TO THE POLICE?
A. IF IT RELATED TO CHILD ABUSE I WAS TO REPORT THAT OR

THERE WAS A FIVE HUNDRED DOLLAR FINE AND SIX MONTHS IMPRISONMENT FOR FAILURE TO NOTIFY THE POLICE AND/OR DSS.

Q. LAVERNE SINGLETON REPORTED TO YOU THAT SHE WAS PROBABLY POSITIVE FOR COCAINE BECAUSE HER BROTHER USED COCAINE IN THE BATHROOM AND SHE USED THE BATHROOM AFTER HE USED IT, RIGHT?

A. I READ THAT IN THE CHART. I BELIEVE IT WAS FROM LAVERNE'S NOTE.

Q. YOU DIDN'T REPORT HER BROTHER, WHOSE IDENTITY YOU KNEW AND WHOSE ADDRESS YOU KNEW BECAUSE SHE LIVED WITH HIM, TO THE POLICE OR TO THE SOLICITOR DID YOU?

A. NO, I DID NOT.

Q. AND HER BROTHER, SHE TOLD YOU BY HISTORY, LIVED IN THE SAME HOME AS SHE LIVED IN WHERE SHE WAS RAISING OTHER CHILDREN, FAIR?

A. THAT IS CORRECT.

Q. AND YOU DIDN'T REPORT HIM TO THE DIVISION OF SOCIAL SERVICES DID YOU?

* * *

**[SHIRLEY BROWN 64]**

Q. AND THAT I THINK YOU TOLD US WAS ON AUGUST 31ST?

A. I DON'T REMEMBER THE DATE, BUT IF YOU SAY I SAID IT THEN I'M SURE THAT YOU WOULDN'T REPEAT SOMETHING THAT I DIDN'T SAY.

Q. NOW, LET'S TALK ABOUT PLAINTIFF'S EXHIBIT NUMBER 120 IN EVIDENCE. YOU RECOGNIZE THAT, AS YOU DID WHEN YOU WERE ON THE STAND BEFORE, AS BEING IN YOUR HANDWRITING, FAIR?

A. THAT'S CORRECT.

Q. AND THAT WAS, AS I TAKE IT, LOOKING AT IT, JUST WRITTEN ON A PLAIN WHITE PIECE OF PAPER FOR YOUR PERSONAL NOTES; RIGHT?

A. THAT'S CORRECT.

Q. THAT WAS NOT PART OF THE MEDICAL RECORD?

A. THIS WAS JUST KIND OF MY NOTE WHEN I WAS IN TALKING WITH A PATIENT SO THAT WHEN I WENT TO WRITE IN THE MEDICAL RECORD I WOULD MAKE SURE THAT ALL OF THE INFORMATION THEY GAVE ME WAS WRITTEN.

Q. AND TOWARD THE TOP OF THAT NUMBER 120, YOU MAKE A NOTE, BOYFRIEND IS BLACK, DON'T YOU?

A. YES, I DO.

Q. NOW, YOU DIDN'T WRITE FATHER OF BABY IS BLACK, DID YOU?

A. NO, I DID NOT.

Q. YOU DIDN'T WRITE HUSBAND IS BLACK, DID YOU?

A. NO, I DID NOT.

Q. YOU WROTE BOYFRIEND IS BLACK. WHAT MEDICAL PURPOSE DID IT SERVE FOR YOU TO NOTE - AND BY THE WAY - LET ME WITHDRAW

THAT QUESTION.
THAT PATIENT THAT YOU WROTE THAT ON IS WHITE, ISN'T SHE?
A. I HAVE NO EARTHLY IDEA. IS IT ON HERE THAT SHE IS WHITE. IT DOESN'T - I DON'T KNOW WHO THIS PATIENT IS. I WOULD HAVE TO SEE HER RECORD TO KNOW.
Q. WELL, YOU HAVE BEEN FAMILIAR WITH THAT DOCUMENT FOR A LONG TIME NOW, HAVEN'T YOU?
A. THIS DOCUMENT?
Q. YES.
A. I THINK I MIGHT HAVE SAW IT DURING ONE OF MY DEPOSITIONS, BUT, I MEAN, I HAVEN'T HAD THESE RECORDS IN MY POSSESSION IN A LONG TIME.
Q. YOU KNEW WHEN YOU CAME BACK TO THE STAND TODAY I WAS GOING TO QUESTION YOU ABOUT THAT, DIDN'T YOU?
A. MR. HOOD NEVER SHOWED ME THIS AND HE NEVER TOLD ME YOU WERE GOING TO QUESTION ME ABOUT THIS.
Q. WHY DID YOU RECORD THE RACE AS OPPOSED TO THE FATHERHOOD OR THE PARENT OF THE CHILD, WHY DID YOU RE - WHY DID YOU RECORD THE RACE OF THE PATIENT'S BOYFRIEND?
A. I WOULD HAVE RECORDED IT BECAUSE SHE MIGHT HAVE SAID HE COULD BE THE FATHER OF THE BABY. SOMETIMES PATIENTS WOULD SAY I'M NOT SURE HE IS THE FATHER. OKAY?
Q. WHY DID YOU RECORD BLACK?

MR. HOOD: BEG THE COURT, PLEASE, SHE IS TRYING TO

**[SHIRLEY BROWN 66]**

ANSWER THE QUESTION.
THE COURT: LET HER FINISH HER ANSWER.
A. IF HE IS THE FATHER OF THE BABY THAT IS PERTINENT INFORMATION. AND IF THE PERSON COULD NOT TELL US WHO THE FATHER OF THE BABY IS, THEN WE WOULD WANT TO MAKE SURE THAT WE LOOKED AT ALL ASPECTS TO LOOK FOR A SICKLE CELL TRAIT OR ANY MEDICAL PROBLEMS THAT CAN OCCUR.
Q. OKAY. TO LOOK FOR SICKLE CELL TRAITS OR ANY MEDICAL PROBLEMS, THAT IS ASSOCIATED WITH RACE, RIGHT?
A. THAT IS CORRECT.
Q. NOW, MS. BROWN, YOU KNOW, DON'T YOU, THAT THERE IS A SOUTH CAROLINA STATUTE THAT WAS IN EXISTENCE AT THAT TIME THAT REQUIRES EVERY SINGLE CHILD BORN IN SOUTH CAROLINA TO BE TESTED FOR ANY TRAIT THAT COULD RELATE TO RACE, WHETHER WHITE OR BLACK OR ASIAN, HISPANIC, YOU KNOW EVERY CHILD IS TESTED, DON'T YOU?
A. I WAS NOT AWARE OF THAT LAW AT THAT TIME THAT EVERY CHILD WAS TESTED. I'M AWARE OF THE LAW IN RELATION TO BEING TESTED FOR SYPHILIS AND SEXUALLY TRANSMITTED DISEASES.

Q. YOU'RE AWARE OF THAT LAW NOW?
A. I AM.
Q. AND YOU WOULD AGREE WITH ME THAT THAT LAW WAS IN EFFECT, THAT LAW WAS A LAW BACK WHEN YOU WROTE THAT NOTE?
A. I WILL AGREE THAT I HAVE BEEN TOLD THAT LAW WAS IN EXISTENCE, BUT I CANNOT SAY THAT I KNEW THAT LAW WAS IN

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**[SHIRLEY BROWN 71]**

INSTRUCT YOU ABOUT IT. THE ONLY PURPOSE OF THE QUESTION IS TO SEE WHETHER OR NOT SHE HAD KNOWLEDGE OF THAT, BECAUSE IF SHE HAD KNOWLEDGE OF IT, IT MAY AFFECT HER CREDIBILITY IN SAYING THAT SHE REPORTED THIS INFORMATION FOR ANOTHER REASON.
YOU MAY PROCEED.
Q. (BY MR. WHERRY, CONTINUING) YOU CREATED A CHEAT SHEET FOR USE IN YOUR JOB, DIDN'T YOU?
A. THAT'S CORRECT.
Q. LET ME SHOW YOU WHAT HAS BEEN MARKED PLAINTIFF'S EXHIBIT 123 IN EVIDENCE. THAT IS THE CHEAT SHEET, ISN'T IT?
A. THAT IS CORRECT.
Q. ON THAT CHEAT SHEET TO MAKE YOUR JOB EASIER, MS. BROWN, YOU DO NOT HAVE ANY - BY THE WAY THAT FORM WAS CREATED BY YOU, WASN'T IT?
A. IT WAS CREATED BY ME AND ONE OF THE PHYSICIANS.

Q. THERE IS NO PLACE ON THAT FORM TO RECORD THE RACE OF THE BABY'S FATHER, IS THERE?
A. NO. IT WAS A WORKING DRAFT IN PROGRESS.
Q. WHETHER A WORKING DRAFT IN PROGRESS OR NOT, THE ANSWER TO MY QUESTION IS: THERE IS NO PLACE ON THERE-TO RECORD THE RACE OF THE FATHER, IS THERE?
A. NO, THERE IS NOT.
Q. BUT ON THAT PARTICULAR FORM, NUMBER 123 IN EVIDENCE, YOU DO RECORD THE RACE OF THE FATHER OF THE BABY, DON'T YOU?
A. YES, I DO.

**[SHIRLEY BROWN 72]**

Q. AND YOU RECORD IT AS WHAT?
A. FATHER OF BABY IS BLACK.
Q. SO YOU HAD TO MAKE A SEPARATE NOTE TO PUT THAT DOWN OUTSIDE OF THE FILL-IN-THE-BLANKS PART OF THAT FORM, DIDN'T YOU?
A. THAT IS CORRECT.
Q. AND ON THAT PATIENT, MS. BROWN, THAT PATIENT WAS WHITE, WASN'T SHE?
A. AND HER BABY WAS UP FOR ADOPTION.
Q. MS. BROWN, DID I ASK YOU WHETHER HER BABY WAS UP FOR ADOPTION OR DID I ASK YOU WHETHER THE PATIENT WAS WHITE?
A. YOU ASKED ME IF SHE WAS WHITE.
Q. AND THE ANSWER TO THAT QUESTION IS, YES, SHE WAS WHITE?

A. THAT IS CORRECT.
Q. MS. BROWN, LET ME SHOW YOU WHAT HAS BEEN MARKED FOR IDENTIFICATION PLAINTIFF'S EXHIBIT 122?
THE COURT: SHOW HER 122 AND 123.
MR. WHERRY: SHE JUST HAD 123.
THE COURT: SAY WHAT?
MR. WHERRY: SHE JUST HAD 123.
THE COURT: IS THAT THE LAST ONE?
MR. WHERRY: THERE IS ONE MORE.
THE COURT: LET'S SHOW THEM ALL TO HER. YOU'RE GOING TO ASK HER THE SAME QUESTIONS ABOUT ALL OF THEM.
MR. WHERRY: I'M SORRY, SIR, THIS IS THE LAST ONE.

**[SHIRLEY BROWN 73]**

Q. (BY MR. WHERRY, CONTINUING) LET ME HAND YOU PLAINTIFF'S EXHIBIT 119 AND 122. LOOK FIRST IF YOU WOULD AT EXHIBIT 122.
THAT AGAIN, MS. BROWN, IS THE CHEAT SHEET, ISN'T IT?
A. THAT IS CORRECT.
Q. AND ON THAT CHEAT SHEET YOU AGAIN RECORD THE RACE OF THE FATHER OF THE BABY, DON'T YOU?
A. YES, I DO.
Q. LOOKING AT 119, MS. BROWN, I HAVE A BLOWUP OF 119 AND I WOULD LIKE YOU TO LOOK AT THE ORIGINAL AND TELL ME WHETHER

THIS BLOWUP IS A COPY OF THE ORIGINAL THAT YOU HAVE IN YOUR HAND?
A. THAT IS CORRECT.
Q. AND, MS. BROWN, THIS IS PART OF THE PROGRESS NOTES OF THE HOSPITAL, ISN'T IT?
A. THAT IS CORRECT.
Q. THIS IS NOT A CHEAT SHEET AND IT'S NOT YOUR PERSONAL NOTES, RIGHT?
A. THAT IS CORRECT.
Q. AND ON THIS DOCUMENT WHAT DO YOU SAY ABOUT THE RACE OF THE FATHER OF THE BABY?
A. PATIENT LIVES WITH HER BOYFRIEND WHO IS A NEGRO AND HER EIGHT-YEAR-OLD SON.
Q. WHY DO YOU SAY ABOUT THE RACE OF THE FATHER OF THE BABY?
A. ONCE AGAIN, SHE COULD HAVE SAID THAT THE BOYFRIEND WAS POSSIBLY THE FATHER, BUT SHE COULD NOT SAY WHO THE FATHER WAS.

**[SHIRLEY BROWN 74]**

Q. SHE MIGHT HAVE SAID THAT. YOU, IN READING THROUGH THE MEDICAL RECORDS TODAY, IT SEEMS TO ME WHEREVER THE PATIENT SAYS SOMETHING SPECIFIC TO YOU, YOU PUT IT IN QUOTES, DIDN'T YOU?
A. SOMETIMES I DID.
Q. ON THAT 119, DID YOU PUT IN QUOTES THAT SHE TOLD YOU THAT SHE WASN'T SURE WHO THE FATHER OF THE BABY WAS BUT HER

BOYFRIEND WAS NEGRO?
A. NO, I DID NOT.
Q. DID YOU PUT IN YOUR PROGRESS NOTES ANY REASON FOR RECORDING THE INFORMATION THE RACE OF HER BOYFRIEND?
A. THE REASON WOULD HAVE BEEN PART OF THE PSYCHOSOCIAL ASSESSMENT THAT WE DID ON ALL PATIENTS.
Q. MS. BROWN, THERE WAS A FORM USED BY THE HOSPITAL TO RECORD GENETIC INFORMATION, WASN'T THERE?
A. THE GENETIC COUNSELORS HAVE A FORM, YES.
Q. AND THAT WAS FILLED OUT ON ALL - ON ALL MATERNITY PATIENTS, WASN'T IT?
A. I CAN'T SPEAK TO THE FACT THAT THEY FILLED OUT A GENETIC FORM ON EVERYONE.
Q. WELL, IT WAS SUPPOSED TO BE FILLED OUT, WASN'T IT?
A. IF YOU WOULD LET ME LOOK AT THE FORM
Q. I SURE WILL. I'M JUST GETTING READY TO DO THAT.
MR. WHERRY: YOUR HONOR, I'M NOT GOING TO HAVE MARKED THIS AS PART OF ELLEN KNIGHT'S RECORD, WHICH HAVE

**[SHIRLEY BROWN 75]**

ALREADY BEEN IN EVIDENCE, AND IT WOULD BE REDUNDANT TO MARK IT AGAIN.

Q. (BY MR. WHERRY, CONTINUING) LET ME SHOW YOU WHAT PURPORTS TO BE A GENETIC SCREENING FORM. DO YOU RECOGNIZE THAT DOCUMENT AS BEING A MEDICAL DOCUMENT OF THE MEDICAL UNIVERSITY OF SOUTH CAROLINA?
A. I THINK THIS IS SOMETHING THEY USE IN THE CLINIC. THIS IS NOT A FORM THAT WE USE IN THE HOSPITAL AND IT DOESN'T HAVE A STAMP ON HERE THAT SAYS THAT IT'S A PERMANENT FORM THAT IS USED ON EVERY PATIENT.
Q. AS A GENETIC SCREENING FORM IT DOES INQUIRE OF THE RACE OF THE BABY'S A FATHER, DOESN'T IT?
A. YES, IT DOES.
Q. ONE OR TWO AREAS MORE OF QUESTIONING. YOU INDICATED IN RESPONSE TO MR. HOOD'S QUESTIONS THAT YOU NEVER INDICATED OR YOU NEVER SAID UNDER ANY CIRCUMSTANCES THAT THERE WAS A CRISES OF BLACK WOMEN USING COCAINE; IS THAT RIGHT?
A. THAT IS CORRECT.
Q. WHEN MARTHA WILLIAMS WAS AT THE HOSPITAL WORKING THERE, YOU KNEW HER, DIDN'T YOU?
A. YES, I DID.
Q. DID YOU HAVE ANY PROBLEMS WITH HER THAT WOULD LEAD YOU TO BELIEVE THAT SHE HAD A MOTIVE TO COME IN AND LIE ABOUT IT?
A. SHE DID NOT PERSONALLY CARE FOR THE POLICY OR FOR ME.
Q. DID SHE TELL YOU THAT?

**[SHIRLEY BROWN 76]**

A. ON NUMEROUS OCCASIONS.
Q. MS. BROWN, YOU INDICATED THAT YOU NEVER UNDER ANY CIRCUMSTANCES SAID MOST BLACK WOMEN SHOULD BE STERILIZED; IS THAT RIGHT?
A. THAT IS CORRECT.
Q. YOU INDICATED THAT YOU NEVER SAID, I THINK THAT WAS WHAT - THAT WAS THE ANSWER IN RESPONSE TO MR. HOOD'S QUESTION, YOU INDICATED THAT YOU NEVER SAID THAT THE MIXING OF RACES WAS AGAINST GOD'S WAY, YOU NEVER SAID THAT IN THE HOSPITAL?
A. I DID NOT SAY THAT. I STATED THAT THAT WAS MY PERSONAL BELIEF AND THAT MY PERSONAL BELIEF WOULD NEVER INTERFERE WITH THE WAY I CARED FOR A PATIENT.
Q. WELL, HAVE YOU SAID THAT AROUND THE HOSPITAL?
A. AS PART OF MY JOB AS A CASE MANAGER I OFTEN HAVE DISCUSSION WITH THE STAFF. THEY DISCUSS WITH ME THEIR FEELINGS. I DISCUSS WITH THEM WE MIGHT HAVE OUR VALUES. I COULD HAVE VERY WELL SAID THAT. BUT, THE COMMON THEME AND WHAT I ALWAYS SAY IS THAT IT DOESN'T MATTER THE RACE, THE SOCIOECONOMIC STATUS, DOESN'T MATTER WHO A PERSON KNOWS OR DOESN'T KNOW, IT DOESN'T MATTER WHAT OUR VALUES ARE, WE HAVE

TO LEAVE THAT AT THE DOOR AND WE HAVE TO TREAT ALL PATIENTS WITH COMPASSION.

SO, I CANNOT SAY THAT I HAVE -YOU KNOW, I CAN SAY THAT IF SOMEONE HAS ASKED ME THAT AT THE HOSPITAL, I CAN SAY THAT WE HAVE DISCUSSED VARIOUS ISSUES, YOU KNOW, THAT IS PART

**[SHIRLEY BROWN 77]**

OF MY JOB. AND I WILL ALWAYS SAY THIS MIGHT BE MY PERSONAL BELIEF, BUT I WILL - WHAT I ROLE MODEL AT THE MEDICAL UNIVERSITY IS THAT ALL PATIENTS ARE TO BE TREATED ALIKE AND I DO NOT SHOW FAVORITISM BASED ON WHAT THEIR RACE IS OR HOW MUCH MONEY THEY HAVE OR DON'T HAVE.

Q. SO AT LEAST INSOFAR AS MARTHA WILLIAMS REPORTING THAT YOU HAVE SAID THAT, THAT PART OF WHAT SHE SAID WAS TRUTHFUL, THAT YOU WOULD HAVE SAID IN THE HOSPITAL SETTING IN YOUR OPINION THE MIXING OF RACES IS AGAINST GOD'S WAY?

A. IF I SAID THAT AND SHE WAS PRESENT, IT WOULD HAVE BEEN WITH A GROUP OF NURSES DISCUSSING OUR VARIOUS FEELINGS AND HOW WE COPE WITH VARIOUS THINGS. IT WOULD NOT HAVE BEEN TO TRY AND SAY THIS PATIENT IS GOOD OR THIS PATIENT IS BAD. I DON'T DO THAT.

Q. YOU DO, MS. BROWN, PERCEIVE YOURSELF TO BE A MISSIONARY, DON'T YOU?
A. AS A MISSIONARY?
Q. YES.
A. I BELIEVE IN GOD AND I GO TO CHURCH AND I DO A LOT OF MISSION WORK, YES, I DO.
Q. AND SO INSOFAR AS MARTHA WILLIAMS REPORTING YOU SAYING THAT IN THE HOSPITAL, THAT WOULD AT LEAST BE TRUTHFUL, FAIR?
A. I'M SORRY I DIDN'T KNOW SHE SAID I WAS A MISSIONARY.

Q. MS. BROWN, WITH THERESA JOSEPH, IN HER. RECORD YOU DID NOT RECORD ANYWHERE THE RACE OF HER BABY, DID YOU?

**[SHIRLEY BROWN 78]**

A. I WOULD HAVE TO LOOK AT HEAR RECORD TO SEE.
Q. IF IT WAS IMPORTANT THE RACE OF THE BABY'S FATHER, THE RACE OF THE BABY WOULD BE IMPORTANT FOR ADOPTION PURPOSES, WOULD IT NOT?
A. THAT IS CORRECT.
Q. SO THEREFORE WE WOULD EXPECT TO FIND IT IN HER MEDICAL RECORD?
A. WOULD EXPECT TO FIND?
Q. THE RACE OF HER BABY IN HER MEDICAL RECORD AS RECORDED BY YOU?
A. THE MOTHER OF THE BABY IS THE ONE WHO TELLS US WHAT THE

RACE OF THE BABY IS ON THE BIRTH CERTIFICATE.
Q. I WAS TALKING ABOUT THE HOSPITAL RECORDS WHERE YOU'RE REPORTING THE RACE OF THE FATHER, WHICH YOU SAY IS IMPORTANT FOR ADOPTION PURPOSES. THE RACE OF THE BABY SHOULD BE RECORDED THERE ALSO FOR THE ADOPTION PURPOSES, SHOULDN'T IT?
A. THE QUESTION THAT THEY ASK US IS WHAT IS THE RACE OF THE MOTHER AND WHAT IS THE RACE OF THE FATHER.
Q. WHO ASKED?
A. THE PEOPLE WHO ARE COMING FOR THE ADOPTION. AND THEY ALSO ASK US IF WE KNOW THE NAME OF THE FATHER.
Q. WELL, HAVE YOU RECORDED IN ANY HOSPITAL RECORD THE NAME OF THE FATHER?
A. WHEN A PATIENT WOULD GIVE THE NAME OF THE FATHER AND IT WAS A BABY UP FOR ADOPTION, YES., IT WOULD HAVE BEEN RECORDED.

**[SHIRLEY BROWN 79]**

Q. WELL THE DECISION OF PUTTING THE BABY UP FOR ADOPTION ISN'T NECESSARILY MADE AT THE TIME OF BIRTH, IS IT?
A. SOMETIMES IT'S MADE AT BIRTH AND SOMETIMES IT'S MADE BEFORE BIRTH AND SOMETIMES IT'S MADE AFTER BIRTH. AND A LOT OF THOSE ENTRIES WOULD HAVE BEEN MADE IN THE BABY'S CHART.

Q. LIKE THE RACE OF THE FATHER?
A. COULD HAVE BEEN PUT IN THE BABY'S CHART, YES.
Q. IF YOU CALL THE SOLICITOR'S OFFICE TO ASK THAT A PATIENT NOT BE ARRESTED FOR NOT BEING COMPLIANT, AND YOU WOULD HAVE NOTED THAT IN THE PATIENT'S RECORD, WOULDN'T YOU, IN THE PROGRESS NOTES?
A. IF I HAD THE PATIENT RECORD THERE, YES, I WOULD HAVE. EVERY NOW AND THEN I WOULD GET A CALL AND I WOULD NOT HAVE ACCESS TO THE RECORD AT THAT POINT IN TIME.
Q. SO, IF IN FACT THAT'S WHAT YOU DID IN LAVERNE SINGLETON'S CASE, WE SHOULD SEE THAT IN HER PATIENT RECORD, SHOULDN'T WE?
A. IN LAVERNE SINGLETON'S?
Q. YEAH.
A. IF I CALLED TO ABOUT - TO THE SOLICITOR'S OFFICE?
Q. YES, MA'AM.
A. OKAY.
Q. WE SHOULD SEE THAT IN HER PATIENT RECORD, SHOULDN'T WE?
A. THAT IS CORRECT. IF I -
Q. ONE LAST QUESTION, MS. BROWN. THE WAY THAT WE LEARN OF THE NUMBER OF WOMEN WHO TESTED POSITIVE FOR COCAINE BEFORE THE

**[SHIRLEY BROWN 80]**

POLICY WAS ACTUALLY STARTED WAS THROUGH AN INFORMAL COUNTING

METHOD DEVISED BY YOU IN WHICH YOU PUT TICK MARKS ON AN INDEX CARD, FAIR?
A. THAT'S CORRECT.
Q. AND THAT WAS THE ONLY RECORD KEPT OF THAT, AS FAR AS YOU KNOW?
A. AT THAT POINT IN TIME, YES.
MR. WHERRY: MAY I HAVE JUST A MOMENT, PLEASE, YOUR HONOR?
THE COURT: YES.
(PAUSE IN PROCEEDINGS.)
Q. (BY MR. WHERRY, CONTINUING) THE GENETIC SCREENING FORM THAT I SHOWED YOU EARLIER?
A. YES, SIR.
Q. THAT INQUIRES OF THE RACE OF BOTH THE MOTHER AND THE FATHER, DOESN'T IT?
A. YES, SIR.
Q. I DIDN'T WANT TO LEAVE THE IMPRESSION THAT ONLY ASKS THE FATHER'S RACE?
A. THAT'S CORRECT.
Q. AND THAT DOCUMENT, THAT GENETIC SCREENING FORM IS SIGNED BY A MEDICAL DOCTOR, ISN'T IT?
A. THAT IS CORRECT.
MR. WHERRY: I'M SORRY, YOUR HONOR. THERE IS ONE MORE.

**[SHIRLEY BROWN 81]**

Q. (BY MR. WHERRY, CONTINUING) LET ME SHOW YOU WHAT HAS BEEN MARKED PLAINTIFF'S EXHIBIT 125 FOR IDENTIFICATION. THE

PROGRESS NOTES THERE WRITTEN BY YOU, MS. BROWN. FIRST OF ALL THAT PATIENT IS A CAUCASIAN, ISN'T THAT RIGHT? WHITE?

A. ACCORDING TO HER PATIENT REGISTRATION SHE IS.

Q. AND IN THAT PROGRESS NOTE THAT I HANDED YOU, YOU DO RECORD THERE THAT ON BEHALF OF THIS PATIENT YOU CALLED THE SOLICITOR AND IN SPITE OF THE FACT THAT SHE HAD BEEN NONCOMPLIANT, YOU ASKED FOR ANOTHER CHANCE, YOU ASKED TO ALLOW HER TO GO TO

MR. HOOD: IF THE COURT PLEASE, THIS IS NOT IN EVIDENCE. IT'S NOT A PLAINTIFF.

MR. WHERRY: I THINK HE IS RIGHT.

THE COURT: OKAY. GOOD.

MR. WHERRY: LOOKING AT THAT FOR A CHANGE, YOUR HONOR.

Q. (BY MR. WHERRY, CONTINUING) LOOKING AT THAT, LET ME ASK YOU NOT WHAT IT SAYS, BUT IN FACT WITH A PARTICULAR WHITE PATIENT, DOES THAT REFRESH YOUR RECOLLECTION AS TO WHETHER YOU CALLED THE SOLICITOR'S OFFICE REQUESTING NONPROSECUTION TO ALLOW A SECOND OR THIRD CHANCE?

A. I'M SORRY, YOU LOST ME IN YOUR QUESTION.

Q. DOES THAT REFRESH YOUR RECOLLECTION, DOES THAT REMIND YOU OF CALLING THE SOLICITOR'S OFFICE TO REQUEST A SECOND OR THIRD

CHANCE FOR A WHITE PATIENT WHO WAS NONCOMPLIANT WITH

**[SHIRLEY BROWN 82]**

TREATMENT?
A. THIS IS A WHITE PATIENT AND IT HAS IN HERE THAT I SPOKE
WITH THE SOLICITOR'S OFFICE.
Q. SO I TAKE IT THE ANSWER TO MY QUESTION IS YES?
A. UMM-HMM.
MR. WHERRY: NOW I HAVE NO FURTHER QUESTIONS, YOUR
HONOR.
THE COURT: ANY REDIRECT?
MR. HOOD: YES.
FIRST YOU WERE ASKED IF THESE WOMEN WERE CHARGED FOR
THIS SANITARY KIT. I HAVE GOT THE BILLS FOR EACH OF THE TEN
PLAINTIFFS. I WOULD LIKE TO PUT THEM INTO EVIDENCE AT THIS
TIME. I HAVE GOT MY SUMMARY OF WHAT THEY WERE CHARGED FOR ON
THE FRONT OF EACH ONE, WHICH I'LL TAKE OFF IF THE COURT WANTS
ME TO.
THE COURT: SHOW IT TO COUNSEL.
MR. WHERRY: YOUR HONOR, I HAVE NEVER SEEN THEM
BEFORE AND I REQUESTED ALL RELEVANT RECORDS. I MEAN, IT'S
ABOUT A QUARTER OF AN INCH THICK, I WOULD HAVE TO GO THROUGH
THEM. THEY HAVE NEVER BEEN PROVIDED TO US. I HAVE NEVER SEEN
THEM. I AGREE THAT THEY'RE RELEVANT.

THE COURT: GO AHEAD.
I TAKE IT FROM THAT THAT THEY CAN'T CONSENT TO THEM COMING IN.
MR. HOOD: DO YOU WANT ME TO BRING THE CUSTODIAN TO

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**[SHIRLEY BROWN 85]**

TO PLACE HIM ON NOTICE THAT THESE RECORDS MAY BE OFFERED. NOW THE QUESTION IS THE FOUNDATION OF THEM, AND I DON'T KNOW HOW YOU'RE GOING TO GET THEM IN, BUT HE DOESN'T QUESTION THE FOUNDATION.

MR. HOOD: NO.

MR. WHERRY: NO, SIR. I DON'T DO THAT.

MR. HOOD: I CAN ASK THE WITNESS THE ONE QUESTION.

Q. (BY MR. HOOD, CONTINUING) WHAT DO THE BILLS REFLECT WITH REGARD TO THE CHARGE FOR THE KIT THAT YOU DESCRIBED ON DISCHARGE FOR EACH OF THE TEN PLAINTIFFS?

A. PLAINTIFF CRYSTAL FERGUSON WAS GIVEN 36 PERI PADS AND THREE THINGS OF O.B. SPONGES AS THE THINGS TO BE USED IN PLACE OF TOILET TISSUE. HYGIENE PANTIES, THREE PAIR. SANITARY BELT. A HYGIENE KIT.

Q. AND IS THAT BASICALLY TRUE OF THE OTHER NINE PLAINTIFFS?

A. THERESA JOSEPH GOT THE SANITARY PADS, AND OTHER ITEMS.

LORI GRIFFIN GOT THE SANITARY PADS AND OTHER ITEMS.
PAULA HALE GOT THE SANITARY PADS.
ELLEN KNIGHT GOT 60 INSTEAD OF 36 SANITARY PADS.
Q. OKAY.
A. LAVERNE SINGLETON GOT 48 INSTEAD OF 36.
PAMELA PEAR GOT 48 PERI PADS.
Q. IN ADDITION TO THE REST OF THE KIT?
A. IN ADDITION TO THE OTHER
Q. OKAY.

**[SHIRLEY BROWN 86]**

A. OTHER THINGS.
SANDRA POWELL GOT 48 SANITARY PADS INSTEAD OF 36, AND WITH THE OTHER THINGS.
PATRICIA WILLIAMS GOT 36 OF THE PADS.
IT LOOKS LIKE SINGLETON GOT 24.
Q. OKAY.
A. AND PAULA HALE GOT 48.
Q. THANK YOU VERY MUCH. NOW YOU WERE ASKED ABOUT THREE OR FOUR PATIENTS THAT
THE COURT: I'M GOING TO LET THE RECORDS IN AND GIVE YOU AN OPPORTUNITY TO LOOK AT THEM AND SEE IF THERE IS ANYTHING IN THERE THAT OTHER THAN WHAT SHE TESTIFIED ABOUT THAT YOU WOULD. LIKE TO RAISE TO THE COURT THAT SHOULDN'T BE

BEFORE THE JURY, BECAUSE I DON'T KNOW WHAT ALL IS IN THERE.

MR. WHERRY: ME EITHER.

THE COURT: BUT YOU CAN LOOK AT THEM AND IF THERE IS ANYTHING OTHER THAN THAT THAT YOU WANT TO MAKE A MOTION TO STRIKE IT, LET ME KNOW.

Q. (BY MR. HOOD, CONTINUING) YOU WERE ASKED ABOUT AN EMPLOYEE NAMED MARTHA WILLIAMS. I BELIEVE THAT SHE LEFT THE MEDICAL UNIVERSITY IN AUGUST OF '91?

MR. WHERRY: I OBJECT, TO THE LEADING NATURE.

MR. HOOD: SHE TESTIFIED TO THAT.

THE COURT: THAT DOESN'T MAKE IT LESS LEADING.

Q. (BY MR. HOOD, CONTINUING) YOU WERE ASKED ABOUT PATIENT

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

**EXCERPTS FROM TESTIMONY OF IRA CHASNOFF**

**[CHASNOFF 3]**

(TESTIMONY OF IRA CHASNOFF, 12/4/96.)

MS. DUNN: CALL DOCTOR IRA CHASNOFF.

- - -

IRA CHASNOFF, PLF. WITNESS, SWORN.

DIRECT EXAMINATION

BY MS. DUNN;

Q. WOULD YOU STATE YOUR FULL NAME, PLEASE.

A. IRA J. CHASNOFF.

Q. WHERE DO YOU PRESENTLY RESIDE?

A. CHICAGO.

Q. WHAT DO YOU DO THERE?

A. I'M A PHYSICIAN. I RUN TREATMENT PROGRAMS AND A POLICY CENTER.

Q. WHEN YOU SAY TREATMENT PROGRAMS, WHAT KIND OF TREATMENT PROGRAM ARE YOU REFERRING TO?

A. TREATMENT PROGRAMS FOR SUBSTANCE-ABUSING PREGNANT WOMEN, PARENTING WOMEN AND FOR THEIR CHILDREN.

Q. AND HOW LONG HAVE YOU HELD THAT POSITION?

A. THAT POSITION IN PARTICULAR FOR SEVEN YEARS.

Q. SO SINCE WHAT DATE?

A. 1990. JANUARY 8TH.
Q. COULD YOU TELL US SOMETHING ABOUT YOUR EDUCATIONAL BACKGROUND, WHERE YOU GOT YOUR UNDERGRADUATE DEGREES AND GRADUATE DEGREES?

**[CHASNOFF 4]**

A. YES. I GOT MY UNDERGRADUATE DEGREE FROM TRINITY UNIVERSITY AT SAN ANTONIO, TEXAS.
Q. WHEN WAS THAT?
A. 1969.
Q. ALL RIGHT.
A. AND MY MEDICAL DEGREE IN 1973 FROM THE UNIVERSITY OF TEXAS.
Q. DO YOU HAVE ANY FORMAL TRAINING BEYOND YOUR MEDICAL DEGREE?
A. YES. I DID A THREE-YEAR PEDIATRIC RESIDENCY AT CHILDREN'S MEMORIAL HOSPITAL AT NORTHWESTERN UNIVERSITY MEDICAL SCHOOL.
Q. DO YOU HAVE ANY KIND OF BOARD CERTIFICATION?
A. I'M A BOARD CERTIFIED PEDIATRICIAN.
Q. ARE YOU LICENSED TO PRACTICE MEDICINE?
A. YES.
Q. WHERE ARE YOU LICENSED?
A. ILLINOIS.
Q. DO YOU HAVE ANY OTHER TRAINING BEYOND THE PEDIATRIC SPECIALIZATION?
A. NO.

Q. HAVE YOU DONE ANY WORK IN THE FIELD OF ADDICTION?
A. YES. I'VE WORKED EXTENSIVELY IN THE FIELD OF ADDICTION SINCE 1976.
Q. CAN YOU TELL US SPECIFICALLY WHAT YOU HAVE DONE IN THAT

**[CHASNOFF 5]**

FIELD?
A. IN 1976 I OPENED ONE OF THE FIRST DRUG TREATMENT PROGRAMS FOR PREGNANT WOMEN IN THE UNITED STATES. IT WAS A COMPREHENSIVE PROGRAM TO GIVE SERVICES TO PREGNANT, DRUG-USING WOMEN AND TO PROVIDE CARE FOR THEIR CHILDREN AFTER THE BABIES WERE BORN.
Q. AND WHAT DID YOU DO IN CONNECTION WITH DEVELOPING THAT PROGRAM?
A. IT WAS WHEN I WAS IN PRIVATE PEDIATRIC PRACTICE AND I WAS
A. VOLUNTEER AT THE UNIVERSITY HOSPITAL, WE GOT TOGETHER A GROUP OF INDIVIDUALS FROM THE DEPARTMENTS OF PSYCHIATRY AND OBSTETRICS AND PEDIATRICS TO DEVELOP A COMPREHENSIVE PROGRAM THAT COULD GIVE PREGNANT WOMEN THE KIND OF PRENATAL CARE AND DRUG TREATMENT THEY NEEDED. THE GOAL WAS TO IMPROVE THE OUTCOME OF THE BABY AT THE TIME OF THE DELIVERY.

Q. AND AT THE TIME THAT YOU BEGAN THE WORK YOU DESCRIBED AT THAT TREATMENT CENTER, WAS THERE ANY KIND OF CERTIFICATION OR ACCREDITATION PROCESS FOR SOMEONE WORKING IN ADDICTION?

A. NO, AT THAT TIME THERE WAS NO CERTIFICATION. NO SPECIAL TRAINING AVAILABLE IN THE AREA OF ADDICTION.

Q. DID YOU HAVE ANY WORK IN THE AREA DEVELOPING SOME CERTIFICATION IN THAT AREA?

A. WELL THE CERTIFICATION PROCESS NOW THROUGH THE AMERICAN SOCIETY OF ADDICTION MEDICINE, I'M NOT SURE WHAT YEAR THAT CERTIFICATION PROCESS BEGAN, BUT THEY ASKED ME TO HELP. I DID

**[CHASNOFF 6]**

THE INITIAL TRAINING IN THE FIELD OF DRUG USE DURING PREGNANCY AND HELPED THEM DEVELOP SOME OF THE QUESTIONS AND CRITERIA FOR THE CERTIFICATION PROCESS AND ADDICTION.

Q. WHEN YOU SAY HELP THEM, WHO IS THEM?

A. THE SOCIETY.

Q. HAVE YOU PUBLISHED ANY ARTICLES?

A. YES, I HAVE.

Q. IN SCIENTIFIC JOURNALS?

A. YES, WE HAVE PUBLISHED ARTICLES IN A WIDE RANGE OF

SCIENTIFIC JOURNALS AND POLICY JOURNALS RELATED TO SUBSTANCE ABUSE DURING PREGNANCY. RELATED TO THE CARE OF THE CHILDREN, LONG-TERM OUTCOME OF THE CHILDREN WHO HAVE BEEN EXPOSED TO DRUGS DURING PREGNANCY.

Q. CAN YOU GIVE US JUST A COUPLE OF SPECIFIC EXAMPLES OF THE KIND OF ARTICLES THAT YOU HAVE WRITTEN AND SPECIFIC JOURNALS THEY APPEARED IN.

A. SURE. A GOOD NUMBER OF ARTICLES IN THE - IN THE JOURNAL CALLED PEDIATRICS, WHICH IS THE OFFICIAL JOURNAL OF THE AMERICAN ACADEMY OF PEDIATRICS. THOSE ARTICLES FOCUSED ON DRUG USE DURING PREGNANCY AND THE OUTCOME OF THE CHILD, WHAT HAPPENS TO THE, CHILDREN, BOTH SHORT-TERM AND LONG-TERM.

I HAVE PUBLISHED TWO ARTICLES IN THE NEW ENGLAND JOURNAL OF MEDICINE, ONE OF WHICH WAS AN ARTICLE THAT FIRST LOOKED AT THE IMPACT OF COCAINE AND OTHER DRUGS ON PREGNANCY OUTCOME IN A NEWBORN. AND ANOTHER ONE IN THE NEW ENGLAND

**[CHASNOFF 7]**

JOURNAL WHICH LOOKED AT SOME POLICIES THAT HAVE BEEN ESTABLISHED IN THE STATE OF FLORIDA THAT MANDATED REPORTING OF WOMEN WHO USED DRUGS DURING PREGNANCY INTO THE CHILD ABUSE

REPORTING SYSTEM.
Q. HAVE YOU HAD ANY ACTIVITY SINCE YOU WERE A STUDENT WITHIN THE ACADEMIC AREA?
A. WHEN I FINISHED MY RESIDENCY I JOINED THE FACULTY OF NORTHWESTERN AND TAUGHT COURSES IN PEDIATRICS, PSYCHIATRY, AND SOME OF THE STATISTICAL COURSES FOR MEDICAL STUDENTS AT NORTHWESTERN FOR 15 YEARS. AND FOR THE LAST FOUR YEARS I HAVE BEEN A PROFESSOR AT THE UNIVERSITY OF ILLINOIS COLLEGE OF MEDICINE TEACHING IN THE AREA OF PEDIATRICS.
Q. AND YOU STILL HOLD THAT POSITION?
A. YES, I CURRENTLY AM A PROFESSOR OF PEDIATRICS.
Q. ARE YOU CURRENTLY ON ANY ACADEMIC OR PROFESSIONAL COMMITTEES?
A. I HAVE SERVED ON SEVERAL STATE AND FEDERAL TASK FORCES AND COMMITTEES LOOKING AT HEALTH CARE DELIVERY, LOOKING AT SUBSTANCE ABUSE TREATMENT SERVICES, ADDRESSING SOME OF THE POLICY ISSUES OF HOW TO DELIVER CARE TO HIGH-RISK POPULATIONS. I HAVE SERVED ON VARIOUS COMMITTEES THROUGH VARIOUS ASSOCIATIONS, SUCH AS THE AMERICAN ACADEMY OF PEDIATRICS. AND I'M ALSO ON THE EDITORIAL BOARD OF SEVERAL OF THE JOURNALS, MEDICAL JOURNALS, NEW ENGLAND JOURNAL OF

MEDICINE PEDIATRICS, JOURNAL OF PEDIATRICS.

**[CHASNOFF 8]**

Q. DO YOU SERVE ON ANY NATIONAL GRANT REVIEW COMMITTEES?
A. OH, YES. I HAVE REVIEWED GRANTS FOR THE NATIONAL INSTITUTES OF HEALTH, NATIONAL INSTITUTES OF DRUG ABUSE, CENTER FOR SUBSTANCE ABUSE, PREVENTION, THE U.S. DEPARTMENT OF EDUCATION. SO - I CAN'T REMEMBER THEM ALL, BUT -
Q. HAVE YOU SERVED AS A CONSULTANT EITHER FOR GOVERNMENT OR PRIVATE INSTITUTIONS?
A. I HAVE HAD AN OPPORTUNITY TO WORK AT THE COMMUNITY LEVEL HELPING COMMUNITIES SET UP COMPREHENSIVE INTERVENTION PROGRAMS. I HAVE WORKED AT THE STATE LEVEL WITH SEVERAL STATES IN HELPING THE STATE DEVELOP POLICY AND PROGRAMS SPECIFICALLY FOR PREGNANT SUBSTANCE-ABUSING WOMEN AND THEIR CHILDREN.
Q. COULD YOU GIVE US EXAMPLES OF THE STATES THAT YOU WORKED WITH?
A. FLORIDA, ALABAMA, OHIO, ILLINOIS, CALIFORNIA, NEW YORK, THAT'S ALL I CAN THINK OF RIGHT OFF.
Q. DR. CHASNOFF, HAVE YOU TESTIFIED IN U.S. DISTRICT COURTS AS AN EXPERT?

A. I AM NOT SURE IF THEY WERE U.S. DISTRICT COURTS, BUT I HAVE TESTIFIED IN COURT BEFORE, YES.
Q. WHERE WERE THOSE COURTS?
A. IT'S BEEN TWICE. ONE WAS DOWN IN ARIZONA. AND ANOTHER WAS IN CHICAGO.
Q. AND WHAT AREA WERE YOU TESTIFYING IN WHEN YOU TESTIFIED

**[CHASNOFF 9]**

IN THOSE COURTS?
A. THOSE WERE BOTH ACTUALLY MALPRACTICE CASES IN WHICH A MALPRACTICE SUIT HAD BEEN BROUGHT AGAINST PHYSICIANS. AND I PARTICIPATED.
Q. WHAT WAS THE SUBJECT MATTER?
A. I DON'T REALLY - IT WAS QUITE A FEW YEARS AGO, I DON'T REMEMBER. IT WAS RELATED TO PHYSICIANS WHO - IN ONE CASE A PHYSICIAN HAD BEEN SUED FOR MALPRACTICE AND THEY HAD CLAIMED THAT THE CAUSE OF THE POOR OUTCOME HAD BEEN THE MOTHER'S DRUG USE DURING PREGNANCY. AND I TESTIFIED FOR THE PLAINTIFF IN THAT CASE.
ANOTHER CASE WAS SIMILAR ABOUT OUTCOME, AND THE PHYSICIAN WAS SUED AND I TESTIEIED FOR THE DEFENSE IN THAT CLEARLY IN THAT CASE THE OUTCOME WAS RELATED TO THE DRUG USE.
Q. DR. CHASNOFF, YOU USED THE TERM OUTCOME WHICH IS SORT OF

A TERM OF ART TO SOME OF US. WHAT ARE YOU REFERRING TO?
A. IN BOTH OF THOSE CASES IT WAS A BABY THAT WAS BORN AND SUFFERED CEREBRAL-PALSY.
Q. THE OUTCOME OF THE BIRTH OF THE BABY?
A. YES. THE POOR OUTCOME OF THE BABY.
Q. DR. CHASNOFF, HAVE YOU PUBLISHED ANY BOOKS?
A. I HAVE PUBLISHED THREE BOOKS SPECIFICALLY ON - IN THE AREA OF SUBSTANCE ABUSE AND PREGNANCY.
Q. CAN YOU GIVE US AN EXAMPLE.
A. YEAH. THE FIRST ONE WAS CALLED DRUG USE IN PREGNANCY,

**[CHASNOFF 10]**

MOTHER AND CHILD. I BELIEVE It WAS PUBLISHED AROUND 1976 OR SO. THE SECOND ONE WAS DRUGS, ALCOHOL, PREGNANCY AND PARENTING IN 1989 OR '90. AND THEN THE THIRD ONE WAS CALLED CHEMICAL DEPENDENCY AND PREGNANCY ABOUT 1992.
Q. DR. CHASNOFF, HAVE YOU WORKED AS AN EXPERT IN THE FIELD OF ADDICTION WITH THE UNITED STATES GOVERNMENT?
A. YES.
Q. TELL US WHAT YOU HAVE DONE?
A. I HAVE WORKED WITH SEVERAL FEDERAL AGENCIES TO HELP DEVELOP POLICY OR TO HELP LOOK AT OUTREACH. AN EXAMPLE IS

CURRENTLY I'M HELPING HEAD UP THE EFFORT FOR SOMETHING CALLED THE NATIONAL WOMEN'S RESOURCE CENTER, WHICH IS A NATIONAL CENTER THAT IS FUNDED THROUGH SIX DIFFERENT FEDERAL AGENCIES THAT CAME TOGETHER TO LEAD POLICY DEVELOPMENT, TRAINING, EDUCATION, RESEARCH IN WOMEN'S HEALTH, MENTAL HEALTH AND SUBSTANCE ABUSE.

I HAVE ALSO WORKED WITH THE NATIONAL CENTER ON DRUG ABUSE IN POLICY DEVELOPMENT. THE INSTITUTE OF MEDICINE. THE CENTER FOR SUBSTANCE ABUSE PREVENTION. ACYF, WHICH IS ADMINISTRATION FOR CHILDREN, YOUTH AND FAMILIES. ALL OF THESE BEING USUALLY IN THE CONTENT OF DEVELOPING COMPREHENSIVE POLICIES THAT HELP PROMOTE THE ULTIMATE HEALTH OF CHILDREN IN THE FAMILIES.

Q. DR. CHASNOFF, ARE YOU FAMILIAR WITH THE POLICY THAT HAS BEEN IDENTIFIED AS THE INTERAGENCY POLICY THAT INVOLVED THE

**[CHASNOFF 11]**

MEDICAL UNIVERSITY HERE IN CHARLESTON, THE POLICE DEPARTMENT AND THE SOLICITOR'S OFFICE?

A. YES.

Q. WHEN DID YOU FIRST LEARN OF THAT POLICY?

A. I DON'T REMEMBER THE EXACT DATE. I KNOW I GOT A CALL FROM SOMEONE I DIDN'T KNOW, HE INTRODUCED HIMSELF AS CHARLIE CONDON. AND HE SAID THAT HE - HE SAID THAT HE WAS A SOLICITOR IN SOUTH CAROLINA. AND I DIDN'T KNOW WHAT A SOLICITOR WAS. SO I NEARLY HUNG UP. BUT HE EXPLAINED HIS POSITION AND BEGAN TALKING - TOLD ME ABOUT THIS POLICY THAT WAS BEING DEVELOPED. ASKED MY OPINION OVER THE TELEPHONE AND ASKED IF I WOULD READ IT. I SAID THAT I WOULD READ IT, BUT I ALSO TOLD HIM MY OPINION JUST OFF THE MARK RIGHT THERE, THAT IT DID NOT SOUND LIKE SOMETHING THAT I WOULD SUPPORT.

Q. HOW DID MR. CONDON DESCRIBE THE POLICY TO YOU?

A. AS I RECALL, HE DESCRIBED IT, THE PURPOSE OF THE POLICY WAS TO PROMOTE THE HEALTH OF - THE - THE HEALTH OF THE BABIES BEING BORN TO COCAINE-USING WOMEN. AND THE WAY THAT WAS GOING TO BE IMPLEMENTED WAS THAT ANY WOMEN WHO WAS FOUND TO BE USING COCAINE WOULD BE MANDATED INTO TREATMENT AND PRENATAL CARE. IF SHE DID NOT RECEIVE.TREATMENT OR PRENATAL. CARE, HIS OFFICE WOULD BE CONTACTED AND THE WOMEN WOULD BE ARRESTED.

Q. DID MR. CONDON REFER SPECIFICALLY TO COCAINE?

A. YES, HE DID

**[CHASNOFF 12]**

Q. DID MR. CONDON DESCRIBE FOR YOU HIS ROLE IN THIS POLICY?
A. IN THE DEVELOPMENT OF THE POLICY?
Q. YES.
A. AS I RECALL, HE WAS INVOLVED IN WORKING WITH THE MEDICAL UNIVERSITY TO WRITE THE POLICY AND DEVELOP THE PROCEDURES TO IMPLEMENT IT.
Q. IS THAT WHAT HE TOLD YOU?
A. IT'S THE BEST I CAN REMEMBER, YES.
Q. IS THERE ANY MEDICAL BASIS, BASED UPON YOUR EXPERIENCE, TO FOCUS ONLY ON COCAINE IN RELATIONSHIP WITH MATERNAL HEALTH AND FETAL OUTCOME?
A. WELL, MY CONCERN RIGHT FROM THE BEGINNING AND I BELIEVE THIS WAS AROUND - IT WAS ALMOST TEN YEARS AGO, 1988 OR '89, REALLY DON'T REMEMBER, BUT MY CONCERN RIGHT OFF WAS THAT ALTHOUGH WE WERE BEGINNING TO UNDERSTAND THE EFFECT OF COCAINE ON PREGNANCY OUTCOME, WE WERE ALSO REALIZING THAT YOU CAN'T ISOLATE ANY ONE DRUG.
AND CERTAINLY AT THAT TIME IT WAS CLEAR THAT COCAINE WAS ONLY A SMALL PART OF THE PICTURE. THAT THE USE OF TOBACCO, ALCOHOL AND OTHER DRUGS ALSO PLAYED A ROLE IN ALL OF

THIS AND THAT COCAINE COULD NOT BE ISOLATED AS - IT JUST ATTACKING ONE ASPECT OF A WOMAN'S HEALTH AND LIFE-STYLE WAS NOT GOING TO RESULT IN THE OUTCOMES THAT THEY WERE LOOKING FOR.

Q. AND THOSE OUTCOMES BEING?

**[CHASNOFF 13]**

A. THOSE OUTCOMES, YOU KNOW, SUPPOSEDLY WAS TO IMPROVE THE HEALTH AND WELL-BEING OF THE CHILD.

Q. ARE THERE ANY MEDICAL LISTS INVOLVED IN JUST FOCUSING ON COCAINE TO THE EXCLUSION OF PERHAPS OTHER SUBSTANCES THAT MIGHT CAUSE HARM BY PRENATAL EXPOSURE?

A. JUST PURELY FROM A BIOLOGICAL ASPECT, LOOKING AT THE HEALTH ASPECT, WE HAVE DONE STUDIES, EXTENSIVE NUMBERS OF WOMEN WHO ARE USING COCAINE NOW. AND WHAT OUR STUDY SHOW, FOR INSTANCE IF YOU LOOK AT ALL OF THE DIFFERENT DRUGS THAT WOMEN MIGHT TAKE, TOBACCO AND CIGARETTE SMOKING HAS THREE TIMES A GREATER IMPACT ON PRODUCING LOW BIRTH WEIGHT THAN DOES COCAINE.

WE KNOW LOW BIRTH WEIGHT, A BABY BEING BORN WEIGHING LESS THAN FIVE POUNDS EIGHT OUNCES, PUTS THAT BABY AT GREAT RISK FOR DEATH AND FOR ILLNESS. SO THAT IF YOU REALLY WANT TO

IMPROVE THE OUTCOME OF THE CHILD, YOU WOULD DEVELOP PROGRAMS TO HELP WOMEN STOP SMOKING DURING PREGNANCY IF YOU WERE GOING TO FOCUS ON ONLY ONE DRUG. FROM PURELY A MEDICAL PROSPECTIVE YOU WOULD FOCUS ON TOBACCO AND NOT COCAINE.

Q. IS THERE ANYTHING UNIQUELY HARMFUL ABOUT COCAINE IN TERMS OF PRENATAL EXPOSURE?

A. COCAINE IS UNIQUE IN THAT IT HAS A VERY DIRECT EFFECT AND SUDDEN EFFECT. BUT IT IS NOT UNIQUE IN THE FACT THAT THERE ARE OTHER DRUGS THAT ACT IN ALMOST EXACTLY THE SAME WAY. AN EXAMPLE IS AMPHETAMINES, IF A WOMEN USES AMPHETAMINES DURING

**[CHASNOFF 14]**

PREGNANCY SHE GETS SOME OF THE EXACT SAME OUTCOMES IN THE SAME TIME SEQUENCE, SO THAT AGAIN JUST FOCUSING ON COCAINE IS NOT A POLICY THAT MOVES YOU TOWARD WHAT WAS THE STATED OUTCOME, IMPROVING THE HEALTH OF THE CHILD.

Q. WHAT IS AN AMPHETAMINE?

A. OH, AMPHETAMINES, ON THE STREET THEY'RE CALLED SPEED. BACK IN THE FIFTIES WHEN WOMEN WERE GIVEN DIET PILLS, THOSE WERE AMPHETAMINES. AMPHETAMINES, ANOTHER FORM OF AMPHETAMINE IS RITALIN, SO THEY CAN BE USED MEDICALLY AS PRESCRIPTIONS.

BUT ABUSE OF AMPHETAMINES AND THE CURRENT RAGE ACROSS THE COUNTRY IS CALLED ICE. PEOPLE ARE COOKING AMPHETAMINES, MAKING HOMEMADE AMPHETAMINES. THEY HAVE A DEVASTATING EFFECT ON PREGNANCY OUTCOME.

Q. AND WHAT WOULD THAT BE?

A. WELL, AMPHETAMINES CAN CAUSE MANY OF THE SAME THINGS THAT COCAINE DOES, ABRUPTIONS, SUDDEN SEPARATION OF THE PLACENTA FROM THE WALL OF THE UTERUS SO THE BABY CAN BLEED OR MOTHER CAN BLEED TO DEATH. AMPHETAMINES CAUSE PREMATURITY, THEY CAN BE RELATED TO - MANY OF THE SAME KIND OF THINGS THAT ARE ASSOCIATED WITH COCAINE.

THE DIFFICULTY AGAIN WITH AMPHETAMINES JUST LIKE WITH COCAINE, YOU CAN'T SPECIFICALLY DIFFERENTIATE, YOU CAN'T SAY THIS IS DUE TO AMPHETAMINES AND COCAINE CAUSES THIS. IT'S PEOPLE WHO USE DRUGS, USE MULTIPLE DRUGS. YOU DON'T FIND ANYBODY USING ONE DRUG.

**[CHASNOFF 15]**

Q. IS THE PRENATAL EXPOSURE TO A FETUS OF AN ILLEGAL DRUG THE SAME THING AS THE HARM FROM THAT? IS THERE A DISTINCTION BETWEEN THOSE THINGS?

A. WELL, AGAIN THERE IS NO ONE-TO-ONE BASIS. IN FACT IN OUR

STUDIES, AGAIN LOOKING AT LOTS AND LOTS OF BABIES, IF YOU LOOK AT PURELY JUST THE MEDICAL OUTCOME NOW OF ALL OF THE BABIES WE HAVE STUDIED WHOSE MOTHERS USED COCAINE DURING THE PREGNANCY, ABOUT 25 PERCENT OF THE BABIES HAVE SOME KIND OF EFFECT. 70 PERCENT OF THE BABIES THERE DOES NOT APPEAR TO BE ANY IMMEDIATE EFFECT.

SO AGAIN IF YOU'RE LOOKING AT THE IMMEDIATE OUTCOME AT THE TIME OF BIRTH IT'S 25, 75 SPLIT. SO THE MAJORITY OF BABIES DON'T SHOW IMMEDIATE OUTCOMES.

Q. FROM THE EXPOSURE TO COCAINE?

A. FROM EXPOSURE TO COCAINE.

Q. WERE YOU FAMILIAR WITH THE MEDICAL CRITERIA THAT WERE USED IN THE POLICY TO INSTIGATE THE INITIAL UDS?

A. I'M FAMILIAR WITH THE CRITERIA THAT WERE ESTABLISHED. AS I RECALL THOSE CRITERIA CHANGED A LITTLE BIT OVER THE YEARS, BUT I AM FAMILIAR WITH THEM.

Q. AND HOW DID THOSE CRITERIA RELATE TO THE STATED GOAL OF MATERNAL AND FETAL HEALTH?

A. WELL, IF YOU LOOK PURELY AT THE MEDICAL, THERE WERE A LIST OF, I THINK IT WAS ABOUT 7 CRITERIA IF I RECALL. IF YOU LOOK AT THE PURELY MEDICAL PERSPECTIVES, FOR INSTANCE ONE OF

THE CRITERIA WAS PREMATURE DELIVERY. ANOTHER WAS ABRUPTION. SO, IF A WOMEN HAS ONE OF THOSE OUTCOMES, THAT COULD BE AN INDICATION THAT SHE USED COCAINE.

BUT, TOBACCO ALSO CAUSES ABRUPTION. TOBACCO ALSO CAUSES PREMATURITY. SO THAT SETTING UP CRITERIA THAT CAN BE RELATED TO A WIDE RANGE OF PROBLEMS, INCLUDING TOBACCO USE. BUT THEN NARROWING IT DOWN AND SAYING THIS IS WHAT - THIS IS DUE TO COCAINE, YOU JUST CAN'T DO THAT. I MEAN, IT DOESN'T MAKE MEDICAL SENSE.

THEN THERE WERE SOME CRITERIA IN – THAT WERE SET UP THAT REALLY SET UP A VERY BIASED PICTURE. WHEN YOU USE SOMETHING LIKE NO PRENATAL CARE OR INADEQUATE PRENATAL CARE AND SAY THAT'S WHAT WE'RE GOING TO BASE THIS POLICY ON, WHAT YOU HAVE DONE IS SET UP A CERTAIN POPULATION OF WOMEN TO BEAR THE BRUNT OF THAT POLICY, BECAUSE WHEN A WOMEN RECEIVES NO PRENATAL CARE -

WELL, LET'S GO AT IT FROM THE OTHER DIRECTION. POVERTY PLACES A WOMEN ON THE EDGE OF THE HEALTH CARE SYSTEM. WE KNOW THAT. WOMEN WHO ARE POOR HAVE VERY LITTLE ACCESS TO PRENATAL CARE. SO THAT IF YOU SAY, WELL, YOU DIDN'T GET

PRENATAL CARE AND SO WE'RE GOING TO TEST YOUR URINE FOR DRUGS, WHAT YOU'RE ALSO SAYING IS, YOU'RE POOR, WE'RE GOING TO TEST YOUR URINE FOR DRUGS. BECAUSE THE POORER YOU ARE THE MORE LIKELY IT IS YOU'RE NOT GOING TO HAVE ACCESS TO PRENATAL CARE. SO YOU GET INTO THIS CYCLE WHERE YOU'RE SELECTING OUT

**[CHASNOFF 17]**

SPECIFIC GROUP OF WOMEN TO BE TESTED.
NOW, THAT - THAT IS - THAT'S KIND OF THE STARTING POINT. BUT THEN WE HAVE DONE STUDIES AND FOLLOWING UP TO THAT THAT HAVE SHOWN THAT WHEN YOU SET UP THESE KIND OF PUNITIVE POLICIES, YOU DO SELECT OUT WOMEN WHO ARE POOR AND MINORITY WOMEN AND THE IMPLEMENTATION OF THOSE POLICIES.
Q. COULD YOU BEEN MORE SPECIFIC ABOUT WHAT YOU'RE TALKING ABOUT IN TERMS OF RESEARCH?
A. YEAH. WE PUBLISHED AN ARTICLE IN 1990 IN THE NEW ENGLAND JOURNAL OF MEDICINE, WE WERE ASKED TO COME DO A STUDY IN THE STATE OF FLORIDA IN THE PLACE CALLED PINELLAS COUNTY ON THE WEST COAST OF FLORIDA. BECAUSE THEY, ALTHOUGH THEY SAW THEMSELVES AS A VERY STABLE, MIDDLE-CLASS POPULATION, THEY WERE SEEING A NUMBER OF INFANTS WHO THEY THOUGHT MET THE

CRITERIA OF HAVING BEEN EXPOSED TO DRUGS DURING PREGNANCY. SO THEY ASKED US TO DO A STUDY OF THE SITUATION.

SO, THE STUDY WAS SET UP TWO PARTS. THE FIRST PART OF IT WAS EVERY WOMEN IN PINELLAS COUNTY WHO WENT FOR HER FIRST PRENATAL VISIT GOT A URINE TOXICOLOGY. THOSE URINES WERE SENT TO US IN CENTRAL LABS AND TESTED WITHOUT ANY NAMES, IT IS WHAT WE CALL BLINDED, YOU COULDN'T TELL WHOSE URINE WAS WHOSE. BUT WE FOUND THAT THE RATE - WE FOUND AN OVERALL RATE OF POSITIVE URINES FOR ILLEGAL DRUGS OF ABOUT 14 TO 15 PERCENT.

WHEN WE LOOKED AT THE WOMEN IN THE PRIVATE HEALTH

**[CHASNOFF 18]**

CARE SECTOR VERSUS THE PUBLIC WE FOUND THAT THE RATES OVERALL WERE SIMILAR WHETHER A WOMEN WAS GOING TO THE BOARD OF HEALTH CLINIC OR WAS GOING TO A PRIVATE OBSTETRICIAN, THE RATE OF HAVING THE DRUG - A URINE THAT WAS POSITIVE FOR DRUGS WAS SIMILAR IN THE TWO GROUPS.

THE NEXT STEP WAS - WE ALSO DIVIDED ALONG RACIAL LINES BECAUSE ONE OF SUPPOSITIONS IN PINELLAS COUNTY AT THIS TIME WAS THAT YOU COULD SELECT OUT WHO WAS A DRUG USER BASED

ON WHERE THEY GOT THEIR CARE AND ALSO THAT RACE WAS A FACTOR THAT PREDICTED DRUG USE. WHAT WE SHOWED WAS THAT THE RATES OF DRUG USE WERE ACTUALLY, ACCORDING TO THE URINE TOXICOLOGIES, EXACTLY THE SAME. IN FACT IN THE WHITE POPULATION WAS A LITTLE BIT HIGHER THAN IN THE BLACK.

SO THAT WAS THE FIRST PART OF THE STUDY. ANSWERING THE QUESTION WHO IS USING DRUGS DURING PREGNANCY IN PINELLAS COUNTY. SO WHAT WE FOUND IS THAT POOR WOMEN AND MIDDLE-CLASS WOMEN WERE USING AT THE SAME RATES. BLACK WOMEN AND WHITE WOMEN WERE USING AT THE SAME RATES.

THE NEXT STEP WAS THEN THEY HAD THE POLICY THAT IF A BABY - IF A PHYSICIAN SUSPECTED A WOMEN OF USING DRUGS, THAT A PHYSICIAN COULD DO A URINE TOXICOLOGY. THERE WERE NO CRITERIA SET UP. BUT THEN IF THE MOTHER'S URINE AT THE TIME OF DELIVERY OR THE BABY'S URINE WAS POSITIVE, IT WAS A MANDATED REPORT INTO THE CHILD ABUSE REPORTING SYSTEM AND THAT WOMAN WAS INVESTIGATED, AND IN MANY CASES HAD THE BABY TAKEN

**[CHASNOFF 19]**

AWAY FROM HER.

WHAT WE FOUND IS THAT EVEN THOUGH ON BLINDED TESTING

THE RATES OF URINE - POSITIVE URINES WERE SIMILAR FOR BLACK AND WHITE WOMEN, WHEN THE POLICY WAS IMPLEMENTED, TEN TIMES AS MANY BLACK WOMEN HAD THEIR BABIES REPORTED AND TAKEN AWAY AS WHITE WOMEN.

SO THE WAY IT CAME DOWN WAS THAT IF A BLACK WOMEN AND WHITE WOMEN BOTH WALKED INTO A HOSPITAL IN PINELLAS COUNTY, BOTH HAVING JUST USED A DRUG, AND IT DIDN'T MATTER WHAT THAT DRUG WAS, COCAINE OR MARIJUANA OR AMPHETAMINES, THE BLACK WOMEN WAS TEN TIMES MORE LIKELY TO BE REPORTED TO THE SYSTEM AND HER BABY TAKEN AWAY THAN THE WHITE WOMEN.

AND IT CAME OUT PURELY, AND DOING ALL OF THE STATISTICS AND THE THINGS THAT YOU HAVE TO DO TO STUDY THIS, THAT THE SINGLE FACTOR THAT PREDICTED WHICH WOMEN WOULD BE REPORTED TO THE SYSTEM WAS BASED ON RACE.

Q. WHAT DOES THAT HAVE TO DO WITH THE POLICY HERE?

A. WELL, THAT STUDY HAS BEEN REPEATED IN OTHER PLACES, INCLUDING IN ILLINOIS AND OTHER STATES. AND CONSISTENTLY WHAT HAS BEEN FOUND IS WHEN YOU TAKE ANY KIND OF, WHAT IS SEEN AS PUNITIVE POLICY, WHETHER IT'S TAKING A BABY AWAY FROM ITS MOTHER, REPORTING A WOMEN TO CHILD ABUSE, REPORTING OR

THREATENING A WOMEN WITH JAIL, WHENEVER YOU IMPLEMENT THOSE KINDS OF POLICIES, THEY GET IMPLEMENTED IN A RACIALLY BIASED MANNER. AND IT'S BEEN SHOWN IN EVERY STUDY THAT HAS BEEN DONE

**[CHASNOFF 20]**

ALONG THIS LINE.
Q. DO YOU HAVE ANY FIRSTHAND KNOWLEDGE ABOUT TREATMENT THAT IS AVAILABLE IN THE STATE OF SOUTH CAROLINA FOR PREGNANT WOMEN WITH SUBSTANCE ABUSE PROBLEMS?
A. DO YOU MEAN ABOUT THE NUMBER OF TREATMENT PROGRAMS? I DON'T -
Q. HAVE YOU HAD ANY INVOLVEMENT WITH SUBSTANCE ABUSE TREATMENT DIRECTLY IN SOUTH CAROLINA?
A. YEAH. JUST A COUPLE OF YEARS AGO THE FEDERAL GOVERNMENT AWARDED FIVE STATES MONEY THROUGH THE MEDICAID FUNDING SYSTEM TO EXPAND MEDICAID FUNDS TO ENHANCE OUTREACH AND CARE IN PREGNANT SUBSTANCE-ABUSING WOMEN. THERE WERE FIVE STATES. THE FIVE STATES WERE GIVEN THE MONEY AND SAID YOU CAN IMPLEMENT PROGRAMS IN ANY WAY YOU WANT AND LET'S SEE HOW YOU DO. AND THEN WE'RE GOING TO HIRE AN EVALUATOR TO COME IN AND EVALUATE THE FIVE STATES.
OUR GROUP, OUR ASSOCIATION WON THE CONTRACT. WE BID

ON IT WITH ANOTHER GROUP CALLED MATHEMATICAL POLICY RESEARCH.
WE WON THE AWARD TO GO AND EVALUATE EACH OF THE FIVE STATES.
MY PERSONAL INVOLVEMENT WAS TO SET UP A PROTOCOL FOR THE FIVE
STATES WHEREIN WE WENT INTO EACH OF THE FIVE STATES AND.
INTERVIEWED THREE GROUPS OF PEOPLE.
THE FIRST GROUP WERE STATE PEOPLE WORKING AT THE
STATE LEVEL. THE SECOND GROUP WERE PEOPLE WHO WERE ACTUALLY
WORKING DIRECTLY IN THE PROGRAMS GIVING SERVICES TO THE

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**[CHASNOFF 23]**

REALITY WAS AND WHAT THE STATE AND THE PROGRAM WERE SAYING
WOULD HAPPEN.
SO WE SIMPLY WENT BACK AND PULLED THE RECORD. THERE
WERE NINETEEN WOMEN WHO HAD BEEN ADMITTED TO THIS PROGRAM
SINCE ITS INCEPTION. SO WE PULLED THEIR RECORDS. AND THEN WE
PULLED THE RECORDS OF OTHER WOMEN WHO HAD DELIVERED IN THE
HOSPITAL AT THE SAME TIME. SO THE FIRST GROUP, THE NINETEEN
WOMEN THAT WERE ENROLLED IN THE PROGRAM HAD RECEIVED PRENATAL
CARE, THEY WERE IN THE DRUG TREATMENT PROGRAM, AND WE COMPARED
THEM TO WOMEN WHO CAME INTO THE HOSPITAL WITH NO PRENATAL
CARE, WHO HAD NOT RECEIVED DRUG TREATMENT BUT WERE USING DRUGS

AND WERE FOUND BECAUSE THEY HAD A URINE TOXICOLOGY DONE. WHEN WE ANALYZED WHAT HAPPENED TO THEM, EVENTUALLY WHAT WE FOUND WAS THAT THE WOMEN WHO HAD RECEIVED - WHO WERE USING DRUGS, BUT NOPRENATAL CARE AND NO TREATMENT, 50 PERCENT OF THEIR BABIES WERE IN FACT TAKEN AWAY FROM THEM BY THE DEPARTMENT SOCIAL SERVICES OF THE STATE.

ON THE OTHER HAND, WOMEN WHO WERE USING DRUGS, WHO GOT PRENATAL CARE AND WHO ENTERED THIS PROGRAM, 100 PERCENT OF THEIR BABIES WERE TAKEN AWAY FROM THEM. SO IN FACT WHAT THE WOMEN WERE SAYING WAS TRUE.

SO THE SINGLE BIGGEST IMPEDIMENT TO WOMEN ENTERING THE PROGRAM INTO TREATMENT PROGRAMS WAS THE FACT THIS THREAT OF HAVING THE BABIES TAKEN AWAY FROM THEM, WHICH AGAIN CONFIRMS EVERY OTHER STUDY THAT I KNOW OF THAT HAS LOOKED AT

**[CHASNOFF 24]**

THIS ISSUE WHEN YOU SET UP PUNITIVE POLICIES, WHETHER IT'S TAKING BABIES AWAY FROM MOTHERS OR THREATENING WOMEN WITH ARREST AND JAIL, THE ONLY THING YOU ACCOMPLISH IS YOU DRIVE WOMEN OUT OF PRENATAL CARE AND DRIVE THEM OUT OF DRUG TREATMENT, WHICH THEN IMPEDES YOUR PROGRESS IN REACHING YOUR ULTIMATE GOAL, WHICH WAS THE GOAL OF THE CHARLESTON POLICY TO

IMPROVE THE OUTCOME OF MOTHERS AND CHILDREN.

SO, THIS WAS THE VERY BASIS OF ONE OF MY FIRST OBJECTIONS TO THIS POLICY WHEN IT WAS FIRST PRESENTED TO ME, MY FEAR THAT IT WOULD IN FACT DRIVE WOMEN OUT OF THE TREATMENT PROGRAMS AND OUT OF PRENATAL CARE.

Q. DR. CHASNOFF, YOU HAVE DESCRIBED YOUR CURRENT PRIMARY EMPLOYMENT AS RUNNING A CENTER THAT PROVIDES TREATMENT FOR PREGNANT, SUBSTANCE-ABUSING WOMEN; IS THAT CORRECT?

A. WELL LET ME - THE GROUP THAT I WORK FOR, IS CALLED THE NATIONAL ASSOCIATION FOR FAMILIES AND ADDICTION RESEARCH AND EDUCATION. SINCE 1976 I HAVE BEEN RUNNING TREATMENT PROGRAMS AND SETTING UP PROGRAMS. HOWEVER, OUR GOAL IN SETTING UP THESE PROGRAMS IS TO SET UP MODELS THAT THEN THE STATE OR OTHER GROUPS CAN TAKE OVER.

SO, OUR ACTIVE PROGRAM THAT WE ESTABLISHED STARTING IN 1990, WE RAN IT FROM 1990 TO 1994, WAS SETTING UP A MODEL TREATMENT PROGRAM FOR PREGNANT, SUBSTANCE-ABUSING WOMEN. THEN IN 1994, HANDED IT OVER TO THE STATE AND THE STATE IS NOW RUNNING IT.

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**[CHASNOFF 26]**

WOULDN'T DO THIS, YOU WOULDN'T USE DRUGS. THE OTHER MODEL -

AND YOU CAN'T SUCCEED IN THE MORAL MODEL. YOU CAN'T SAY, WELL, WE WANT YOU TO STOP USING AND IF YOU DON'T STOP USING, HERE IS WHAT WE ARE GOING TO DO TO YOU, AND OF COURSE YOU WILL STOP.

THE OTHER MODEL, WHICH MOST PROFESSIONALS IN THE FIELD ADHERE TO, IS CALLED THE DISEASE MODEL. ADDICTION IS SEEN AS A CHRONIC, RELAPSING DISEASE SO THAT THE PROCESS OF ADDICTION IS NOT ONE OF CHOICE AND IT'S NOT ONE OF RATIONAL THOUGHT. IT'S NOT ONE OF SAYING: IF YOU KEEP USING COCAINE OR IF YOU KEEP USING AMPHETAMINES, OR YOU KEEP USING ALCOHOL, HERE IS WHAT IS GOING TO HAPPEN TO YOU. THAT DOESN'T WORK ANY BETTER THAN SAYING IF YOU KEEP SMOKING CIGARETTES YOU'RE GOING TO DIE OF LUNG CANCER, BECAUSE A GOOD NUMBER OF PEOPLE KEEP SMOKING. THAT IS THE PROCESS OF ADDICTION. IT'S A DISEASE PROCESS THAT TAKES SIGNIFICANT TREATMENT AND INTERVENTION IN ORDER TO OVERCOME.

Q. AND WHAT DO YOU NEED TO DO TO TREAT IT? WHAT ARE SOMEOF THE COMPONENTS OF TREATING IT?

A. WELL, AS RELATED SPECIFICALLY TO THIS CASE, THAT IS UNDER DISCUSSION TODAY, WE KNOW THAT JUST LIKE IF YOU HAVE THREE DIFFERENT MEN WHO HAVE A HEART ATTACK, THE TREATMENT THAT YOU

GIVE THEM IS GOING TO BE DIFFERENT FOR EACH OF THOSE MEN. AND THEN IF YOU HAVE A WOMEN WHO HAS A HEART ATTACK, THE TREATMENT FOR THAT WOMAN IS GOING TO BE DIFFERENT THAN ANY OF THOSE

**[CHASNOFF 27]**

OTHER THREE MEN.

IN A PROCESS OF ADDICTION TREATMENT, IT'S THE SAME THING. IT MUST BE INDIVIDUALIZED TREATMENT. YOU MUST CONSIDER ALL CIRCUMSTANCES FOR THE INDIVIDUAL. AND CERTAINLY AND PROBABLY MOST IMPORTANTLY, THAT RESEARCH HAS SHOWN FOR MANY YEARS NOW IS THAT WOMEN HAVE SPECIFIC TREATMENT NEEDS THAT HAVE TO BE ADDRESSED.

JUST TO GIVE YOU SOME VERY SIMPLE ONES. IF YOU HAVE A MAN WHO IS ADDICTED AND YOU SAY IT'S TIME FOR TREATMENT. AND HE SAYS, OKAY, I HAVE GOT TO GET INTO TREATMENT, WHERE DO I GO. IF YOU HAVE A WOMEN WHO IS ADDICTED AND NEEDS TREATMENT, YOU SAY YOU HAVE GOT TO GET INTO TREATMENT, SHE SAYS, OKAY, I'M READY FOR TREATMENT, HER FIRST QUESTION IS NOT WHERE DO I GO, IT'S WHAT DO I DO WITH MY KID.

SO THAT ANY KIND OF TREATMENT PROGRAMS FOR WOMEN HAVE TO TAKE IN SOME DIFFERENT KINDS OF ASPECT JUST

LOGISTICALLY. CHILD CARE. TRANSPORTATION.
THE OTHER ISSUE THAT COMES UP IN SPECIFIC TREATMENT PROGRAMS FOR WOMEN IS THAT IT'S BEEN SHOWN THAT THE GREAT MAJORITY OF WOMEN WHO ARE ADDICTED AS ADULTS COME FROM BACKGROUNDS WITH HIGH RATES OF INCEST, SEXUAL ABUSE RAPE, VIOLENCE. SO THAT THOSE ARE THE KIND OF ISSUES THAT OFTEN DON'T HAVE TO BE ADDRESSED FOR MEN THAT MUST BE ADDRESSED FOR WOMEN.
SO, I MEAN, WE COULD GO ON AND ON, BUT YOU HAVE TO

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**[CHASNOFF 29]**

SUBSTANCE ABUSE. THEY SHOULD FROM JUST A PURELY BIOLOGICAL MEDICAL PERSPECTIVE BE ABLE TO RECOGNIZE. IT. BUT THE MAIN BARRIER IS NOT TRAINING IN THE - LACK OF TRAINING IN THE MEDICAL ASPECTS, IT'S LACK OF TRAINING IN HOW TO COMMUNICATE WITH PATIENTS AND HOW TO UNDERSTAND THE PROCESS.
Q. OKAY. ARE THERE ANY DIFFICULTIES IN INCLUDING IN A MODEL FOR REFERRAL, INFORMATION THAT IS BASED UPON SELF-REPORTING FROM THE PATIENT?
A. YOU MEAN IF A PHYSICIAN, FOR EXAMPLE, ASKS A QUESTION

WHETHER THE WOMEN ANSWERS YES OR NO?
Q. RIGHT.
A. WELL, AGAIN YOU GET INTO ISSUES OF HEALTH CARE AND THE WAY OUR HEALTH CARE SYSTEM WORKS. NOT EVEN SPECIFICALLY TALKING ABOUT WOMEN RIGHT NOW, BUT POOR PEOPLE, PEOPLE WHO DON'T HAVE ACCESS TO HEALTH CARE, WHO ARE NOT COMFORTABLE IN THE HEALTH CARE SYSTEM, WHO DO NOT FEEL EMPOWERED IN THE HEALTH CARE SYSTEM, GENERALLY TEND TO BE MORE HONEST. AND THAT A - AND SPECIFICALLY IN THIS KIND OF CASE, IF A WHITE MIDDLE-CLASS WOMEN WERE ASKED IF SHE USED DRUGS DURING PREGNANCY, SHE WOULD FEEL MUCH MORE EMPOWERED TO DENY IT AND TO SAY NO, AND IT'S NONE OF YOUR BUSINESS, GO AWAY, THAN WOULD A WOMEN WHO IS NOT COMFORTABLE IN THE HEALTH CARE SYSTEM, WHO IS ASKED BY AN AUTHORITY FIGURE, DO YOU USE DRUGS. AND ESPECIALLY IF SHE - YOU KNOW, IF SHE DOESN'T FEEL LIKE SHE HAS ANY CHOICE.

**[CHASNOFF 30]**

SO, ONE OF THE DIFFICULTIES WE GET INTO IS WHEN YOU RELY ON UNTRAINED INDIVIDUALS ASKING THESE KINDS OF QUESTIONS, YOU AGAIN BEGIN TO SELECT OUT WOMEN WHO ARE ON - WHO ARE NOT

EMPOWERED IN THE SYSTEM, WHICH CONSEQUENTLY MEANS USUALLY POOR MINORITY WOMEN.

Q. DR. CHASNOFF, HAVE YOU PUBLISHED INFORMATION RELATING TO COCAINE USE DURING PREGNANCY PRIOR TO 199?

A. YES.

Q. AND HAVE YOU DONE RESEARCH IN THAT AREA PRIOR TO 1989?

A. YES. OUR FIRST ARTICLE ON COCAINE USE IN PREGNANCY WAS PUBLISHED IN 1985.

Q. YOU HAVE GIVEN TESTIMONY TODAY BASED UPON YOUR PRESENT INFORMATION, IS THAT CORRECT?

A. YES.

Q. YOU HAVE TALKED ABOUT RESEARCH THAT HAS BEEN COMPLETED SINCE 1989; IS THAT CORRECT?

A. WELL, IT WAS ALL KIND OF MIXED IN THERE. I DIDN'T DIFFERENTIATE. MOST OF IT HAS BEEN SINCE '89.

Q. BUT YOU INDICATED THAT YOU TALKED TO MR. CONDON SOMETIME IN '89?

A. I BELIEVE THAT IT WAS. '88, '89. IT WAS - I MEAN, THE REASON HE CALLED ME WAS BECAUSE WE HAD BEEN PUBLISHING ARTICLES COCAINE USE AND PREGNANCY SO IT WAS, '89 -- '88, '89.

Q. AND WERE THE OPINIONS THAT YOU GAVE MR. CONDON WHEN HE

CONTACTED YOU CONSISTENT WITH THE ONES THAT YOU HAVE GIVEN IN COURT TODAY?

A. OH, ABSOLUTELY.

MS. DUNN: IF YOU WILL BEAR WITH ME JUST A SECOND.

(PAUSE IN PROCEEDINGS.)

Q. (BY MS. DUNN, CONTINUING) DR. CHASNOFF, DID YOUR WORK THAT WAS AVAILABLE IN 1989 PROVIDE A JUSTIFICATION FOR THE ADOPTION OF THE INTERAGENCY POLICY?

A. NO.

MS. SHOWERS: OBJECTION, YOUR HONOR.

THE COURT: I THINK THE QUESTION IS THE - I THINK THE QUESTION IS LEADING.

LADIES AND GENTLEMEN, STRIKE THE QUESTION AND THE ANSWER. GIVE IT NO CONSIDERATION.

Q. (BY MS. DUNN, CONTINUING) IN YOUR CONVERSATIONS WITH MR. CONDON, DID HE ASK YOU ANY INFORMATION CONCERNING YOUR RESEARCH?

A. YES. NOW THERE WERE A SERIES OF CONVERSATIONS THAT OCCURRED. I KNOW WE TALKED, HE SENT ME A COPY OF THE POLICY. AND THEN ASKED ME MY OPINION ON THE POLICY AND IN THOSE: CONVERSATIONS I MADE IT CLEAR TO HIM.THAT OUR WORK AND THE WORK WE WERE DOING ON THE EFFECTS OF COCAINE AND OTHER DRUGS ON PREGNANCY OUTCOME AND ON NEWBORNS DID NOT SUPPORT THE

POLICY THAT THEY WERE DEVELOPING AND IN NO WAY SHOULD HAVE LED TO THAT KIND OF POLICY.

**[CHASNOFF 32]**

SO THAT IT WAS - THOSE SERIES OF CONVERSATIONS, I MADE IT QUITE CLEAR THAT - THAT I THOUGHT HE WAS TAKING SOME GREAT LEAPS OF FAITH IN TRYING TO MOVE FROM WHAT WAS - HAD BEEN ESTABLISHED IN SOME SCIENTIFIC RESEARCH THAT HAD BEEN PUBLISHED FOR THE PURPOSE OF BEGINNING TO EXPLORE A NEW AREA, AND TAKING A SUDDEN LEAP AND DEVELOPING POLICIES THAT COULD NOT BE SUPPORTED BY THAT RESEARCH.

MS. DUNN: I HAVE NO FURTHER QUESTIONS. THANK YOU.

MS. SHOWERS: GOOD MORNING, DR. CHASNOFF.

<u>CROSS-EXAMINATION</u>

BY MS. SHOWERS:

Q. YOU HAVE SPENT THE LAST 20 YEARS OF YOUR CAREER DOCUMENTING THE ADVERSE EFFECTS OF COCAINE USE ON PREGNANCY AND THE EFFECTS IN UTERO? TRUE?

A. TRUE.

Q. YOU BEGAN DOCUMENTING THE ADVERSE EFFECTS OF COCAINE ON FETUSES IN UTERO IN THE LATE 1970'S, TRUE?

A. NO, ACTUALLY IT STARTED IN THE EARLY '80'S AND PUBLISHED IN '85.

Q. AND YOU AGREE WITH ME THAT COCAINE USE DURING PREGNANCY SHOULD BE DISCOURAGED?
A. I AGREE WITH THAT, YES.
Q. AND THAT DRUGS TAKEN DURING PREGNANCY WILL CROSS THE PLACENTA BARRIER AND REACH THE BABY?
A. YES. THESE SUBSTANCES INCLUDING TOBACCO AND ALCOHOL.

**[CHASNOFF 33]**

Q. MY QUESTION WAS JUST COCAINE.
A. NO, YOU SAID DRUGS.
Q. COCAINE WILL CROSS THE BARRIER ALSO.
WOULD YOU EXPLAIN TO THE JURY WHAT YOU MEAN BY THAT THE PLACENTAL BARRIER?
A. YES. THE PLACENTA IS THE TISSUE THAT BASICALLY TRANSFERS BLOOD AND NUTRIENTS FROM THE MOTHER TO THE BABY THROUGH ITS VASCULAR SYSTEM AND THE UMBILICAL CORD TO THE BABY. AND IT, RATHER THAN ACTING AS ANY KIND OF BARRIER OR PROTECTING THE BABY, RATHER IT'S MORE LIKE A SIEVE. THAT ANY - ANYTHING THAT THE MOTHER INGESTS WILL CROSS FROM THE MOTHER TO THE BABIES.
Q. IN YOUR EARLY ARTICLES ON COCAINE USE DURING PREGNANCY, YOU NOTED THAT THERE WAS AN INCREASED RATE OF PLACENTAL ABRUPTIONS ASSOCIATED WITH COCAINE USE DURING PREGNANCY?

A. YES, THAT CAN BE ASSOCIATED WITH ABRUPTIONS.
Q. CAN YOU EXPLAIN TO THE JURY WHAT ABRUPTION IS?
A. WHEN A WOMEN GOES INTO LABOR THE UTERUS STARTS CONTRACTING AND THE BABY WILL DELIVER. AND AFTER THAT THE PLACENTA WILL THEN SEPARATE FROM THE WALL OF THE UTERUS AND BE DELIVERED. AND THAT'S AFTERBIRTH. IN ABRUPTION THERE ARE CERTAIN CONDITIONS LIKE THE WOMAN HAS HYPERTENSION, HIGH BLOOD PRESSURE, IT CAN LEAD TO ABRUPTION. IF A WOMAN SMOKES TOBACCO OR USES COCAINE OR AMPHETAMINES, THOSE ARE ALL RISK FACTORS FOR INCREASING THE RISK OF ABRUPTION.

**[CHASNOFF 34]**

Q. AND THE PLACENTA SEPARATES AND THE WOMAN BLEEDS?
A. THE PLACENTA SEPARATES THE WOMAN CAN BLEED AND THE BABY CAN LOSE OXYGEN.
Q. AND DIE?
A. THAT'S A POSSIBILITY.
Q. AND IN 1989, YOU DOCUMENT THE HARMS OF COCAINE USE ON THE FETUS TO INCLUDE CONGENITAL ANOMALIES?
A. YES, THERE IS AN INCREASED RATE OF CONGENITAL ANOMALIES.
Q. CAN YOU EXPLAIN TO THE JURY WHAT A CONGENITAL ANOMALY IS?
A. WELL CONGENITAL ANOMALY IS WHEN THE BABY IS BORN WITH

SOME TYPE OF MALFORMATION IS THE WAY TO THINK OF IT. AND CAN RESULT AGAIN FROM A VARIETY OF FACTORS INCLUDING ALCOHOL, THAT'S PROBABLY THE MOST COMMON DRUG THAT CAUSES THESE KIND OF ANOMALIES. COCAINE, ALSO.

Q. COCAINE USE ON A FETUS HAS ALSO BEEN DOCUMENTED TO CAUSE WITHDRAWAL?

A. NO. COCAINE HAS NEVER BEEN SHOWN TO HAVE AN EFFECT OF WITHDRAWAL. THE ONLY DRUG HAS BEEN HEROIN.

Q. I SHOULD HAVE CHARACTERIZED THAT, DOCTOR. IN 1989 YOU DOCUMENTED THAT COCAINE USE DURING PREGNANCY COULD CAUSE WITHDRAWAL?

A. NO, WE NEVER SAID THAT IT CAUSED WITHDRAWAL. IT WAS - WE SHOWED THAT IT CAUSED NEURO - NEUROLOGICAL CHANGES IN THE BABY, BUT A CLEAR SYNDROME OF WITHDRAWAL FROM COCAINE HAS NEVER BEEN CLEARLY DOCUMENTED.

**[CHASNOFF 35]**

Q. PAGE 19, LINE 6.

MS. DUNN: WHICH DEPOSITION?

Q. (BY MS. SHOWERS, CONTINUING) DO YOU REMEMBER WHEN I TOOK YOUR DEPOSITION, DR. CHASNOFF?

A. YES. OH, YES, I DO.

Q. WE WERE IN THE AIRPORT IN CHICAGO, AS I RECALL, CORRECT?

A. YES.

Q. OKAY. AND AT LINE 6 ON PAGE 19, I SAID:

AND THE DOCUMENTED EFFECTS OF COCAINE USE ON A FETUS IN 1989 INCLUDED CONGENITAL ANOMALIES?

AND YOUR ANSWER WAS: YES.

AND THEN AT LINE 9: FETAL DEPENDENCE ON DRUG RESULTING IN WITHDRAWAL, IRRITABILITY, RESTLESSNESS, POOR FEEDING, CRYING, IMPAIRED NEUROBEHAVIORAL ABILITIES, TREMULOUSNESS, INCREASE IN COMPLICATIONS OF LABOR AND DELIVERY, ABRUPTIO PLACENTAE, AND FETAL MONITOR ABNORMALITIES, FETAL MECONIUM STAINING.

AND YOUR ANSWER WAS: YOU SAID DRUG. YOU JUMPED FROM COCAINE TO DRUG.

MY QUESTION WAS: I'M TALKING ABOUT COCAINE SPECIFICALLY.

AND YOUR ANSWER WAS, DOCTOR, AT LINE 18, COULD YOU READ THAT, PLEASE?

A. COCAINE SPECIFICALLY WAS RELATED TO ALL THOSE EXCEPT FOR THE USE OF THE WORD DEPENDENCE.

**[CHASNOFF 36]**

Q. ALL RIGHT, SIR.

SO WITHDRAWAL WAS IN THAT LIST OF COMPLICATIONS, WAS IT NOT?

A. WELL IN READING IT, YES.

Q. OKAY. THANK YOU. IRRITABILITY AS WELL, WAS DOCUMENTED IN 1989, CORRECT?
A. YEAH.
Q. OKAY. RESTLESSNESS, POOR FEEDING AND CRYING AS WELL?
A. YES.
Q. AND IMPAIRED NEUROBEHAVIORAL ABILITIES. CAN YOU EXPLAIN TO THE JURY WHAT IMPAIRED NEUROBEHAVIORAL ABILITIES IS?
A. SURE. WHEN A BABY IS FIRST BORN THE BABY COMES WITH CERTAIN CAPABILITIES TO INTERACT WITH THE ENVIRONMENT, TO RESPOND. SO EVEN A BABY WHO IS ONE OR TWO DAYS OLD, WHEN YOU PICK THAT BABY UP AND LOOK THE BABY IN THE EYE, THAT BABY WILL RETURN YOUR GAZE. IT WILL INTERACT WITH YOU.
IF THE BABY STARTS GETTING IRRITABLE AND IS CRYING, THE BABY THAT IS ONE, TWO DAYS OF AGE, HAVE THE ABILITY TO COMFORT THEMSELVES. THEY, IF YOU WATCH THEM, THEY TRY TO SUCK ON THEIR HAND. THEY WILL TRY TO BRING THEIR ARMS AND LEGS IN. THOSE ARE NEUROBEHAVIORAL ABILITIES, THE ABILITY TO CALM ONE'S SELF. THE ABILITY TO INTERACT WITH THE ENVIRONMENT AND RESPOND TO THE CARETAKER, THOSE ARE NEUROBEHAVIORS.
Q. AND COCAINE USE DURING PREGNANCY IMPAIRS THE NEUROBEHAVIORAL ABILITIES?

**[CHASNOFF 37]**

A. YES. COCAINE USE IS ONE OF THE DRUGS THAT CAN DO THAT.
Q. AND IT ALSO CAUSES TREMULOUSNESS IN A NEONATE?
A. IT CAN BE ASSOCIATED WITH TREMULOUSNESS, YES.
Q. AND COCAINE ALSO IS ASSOCIATED WITH INCREASED LABOR AND DELIVERY COMPLICATIONS?
A. YES.
Q. AND CAN YOU TELL THE JURY WHAT THOSE COMPLICATIONS ARE?
A. WELL, WE HAVE TALKED ABOUT SOME OF THE ABRUPTIONS, THE - COCAINE IS ONE OF THE DRUGS ALSO THAT CAN LEAD TO PREMATURITY, PUT A WOMEN INTO LABOR EARLY. TOBACCO CAN DO THAT. AMPHETAMINES. PRECIPITOUS DELIVERY, MEANING THE BABY IS DELIVERED TOO QUICKLY AND CAN SUFFER LOSS OF OXYGEN. SUDDEN RAPID DELIVERY, AMPHETAMINES CAN ALSO DO THAT. THE BABY CAN BE BORN LOW BIRTH WEIGHT, MEANING NOT HAVING GROWN WELL WITHIN - WITHIN THE WOMB. AND COCAINE IS ONE OF THE SUBSTANCES THAT CAN BE ASSOCIATED WITH THAT.
Q. AND FETAL MONITOR ABNORMALITIES, YOU DOCUMENTED THAT THERE WAS AN ADVERSE EFFECT ON FETAL MONITOR ABNORMALITIES CAUSED BY COCAINE USE IN UTERO. CAN YOU EXPLAIN THAT TO THE JURY, PLEASE?

A. THE FETAL MONITOR TRACKS A BABY'S HEART RATE IN UTERO. AND JUST LIKE AN ADULT, WHEN AN ADULT SMOKES A CIGARETTE, HEART RATE CHANGES CAN OCCUR. WHEN AN ADULT USES COCAINE OR AMPHETAMINES, HEART RATE CHANGES CAN OCCUR. SO IF A BABY IS EXPOSED IN UTERO TO THE MOTHER'S - WELL THERE ARE VARIETY OF

**[CHASNOFF 38]**

OTHER REASONS, TOO, BUT IN THE CONTEXT OF SUBSTANCES, IF THE BABY IS EXPOSED IN UTERO TO ANY OF THOSE KIND OF SUBSTANCES THERE CAN BE HEART RATE CHANGES AND FETAL MONITOR ABNORMALITIES.

Q. YOU ALSO DOCUMENTED IN 1989 THAT USE OF COCAINE DURING PREGNANCY AND THE EFFECTS OPEN THE FETUS CAUSE FETAL MECONIUM STAINING. CAN YOU EXPLAIN THAT?

A. MECONIUM IS THE WASTE MATERIAL THAT A BABY COLLECTS IN HIS BOWEL. HE DOES NOT HAVE A BOWEL MOVEMENT IN UTERO EXCEPT UNDER DIRE CIRCUMSTANCES WE WILL GET TO IN A MINUTE, BUT RATHER THE MECONIUM WHICH IS MADE UP OF SWALLOWED AMNIOTIC FLUIDS AND BLOOD AND LINING OF THE BABY'S GUT THAT'S PASSED AFTER, IT'S A BLACK, TARRY, STICKY SUBSTANCE THAT IS PASSED WITHIN THE FIRST 24 HOURS AFTER BIRTH. IF A BABY IS NOT

GETTING ENOUGH OXYGEN IN THE WOMB, THEN HE LITERALLY WILL START GASPING FOR OXYGEN IN UTERO. AND IF HE BECOMES STRESSED ENOUGH HE WILL THEN PASS THE STOOL, THE MECONIUM IN THE WOMB. AND THERE ARE A NUMBER OF FACTORS AGAIN THAT CAN LEAD TO THAT, COCAINE BEING ONE OF MANY.

Q. LOWER GESTATIONAL AGE AND LOWER NEONATAL BIRTH WEIGHT. YOU TALKED ABOUT THAT A LITTLE BIT EARLIER, BUT THAT IS ALSO ASSOCIATED WITH COCAINE USE DURING PREGNANCY AND ITS SUBSEQUENT EFFECTS ON THE NEONATE, TRUE?

A. LOWER GESTATION AGE IS THE SAME THING AS WE TALKED ABOUT EARLIER, THE PREMATURITY AND THE LOWER NEONATE WEIGHT IS WHAT

**[CHASNOFF 39]**

WE REFER TO AS LOW BIRTH WEIGHT. SO A NUMBER OF FACTORS.

Q. SMALLER BABIES?

A. IN GENERAL, A FULL TERM BABY LESS THAN FIVE POUNDS EIGHT OUNCES.

Q. SPECIFICALLY THE HEAD CIRCUMFERENCE HAVE ALSO BEEN NOTED TO BE SMALLER IN BABIES EXPOSED TO COCAINE IN UTERO?

A. YES. SMALL HEAD CIRCUMFERENCE HAS BEEN SHOWN TO OCCUR MORE COMMONLY IN BABIES WHOSE MOTHERS USED ALCOHOL OR COCAINE

OR AMPHETAMINES OR HEROIN DURING PREGNANCY.
Q. COCAINE USE DURING PREGNANCY AND ITS EFFECTS ON THE BABY HAS ALSO BEEN ASSOCIATED WITH SOMETHING CALLED PRUNE BELLY SYNDROME IN 1989, IS THAT TRUE?
A. YES.
Q. COULD YOU EXPLAIN TO THE JURY WHAT PRUNE BELLY SYNDROME IS?
A. THIS IS NOT A VERY PLEASANT - PRUNE BELLY IS, BABIES WHO ARE BORN WITH KIDNEY - A KIND OF KIDNEY PROBLEM THAT THE KIDNEY IS SWOLLEN, IT CAUSES THE BELLY TO SWELL ALSO. THE MUSCLES IN THE ABDOMEN DON'T DEVELOP NORMALLY SO THAT WHEN THE BABY IS BORN THERE IS LACK OF MUSCLES IN THE ABDOMEN SO THAT THE ABDOMEN IS WRINKLED AND LOOKS LIKE A PRUNE, AND IT'S CALLED PRUNE BELLY SYNDROME.
Q. THAT'S A PRETTY SERIOUS COMPLICATION?
A. THE MOST SERIOUS ASPECT OF IT IS THAT IT CAN BE ASSOCIATED WITH KIDNEY PROBLEMS THAT CAN RESULT IN KIDNEY

**[CHASNOFF 40]**

FAILURE, NEED FOR A TRANSPLANT. PRUNE BELLY SYNDROME MOST COMMONLY OCCURS FOR UNKNOWN REASONS, BUT BABIES WHOSE MOTHERS HAVE USED AMPHETAMINES OR COCAINE, CAN - DO HAVE A SLIGHTLY

INCREASED RISK OVER THE GENERAL POPULATION.

Q. YOU ALSO, IN 1989, DOCUMENTED THAT COCAINE EXPOSURE IN UTERO WAS ASSOCIATED WITH LIMB REDUCTION DEFORMITIES; IS THAT TRUE?

A. YEAH. A LIMB REDUCTION DEFORMITY IS WHEN A BABY IS BORN MISSING A LIMB. AN ARM OR A LEG OR A TOE OR FINGERS. AND THAT SPECIFICALLY OCCURS IN THE KIND OF DRUGS THAT CUT OFF BLOOD SUPPLY FOR THE BABY. AGAIN, AMPHETAMINES, COCAINE, MAYBE A SLIGHTLY INCREASED RATE WITH TOBACCO USE.

Q. IN 1989 YOU ALSO DOCUMENTED THAT COCAINE USE DURING PREGNANCY, WHEN THE BABY WAS BORN, THE EFFECTS OF COCAINE OR THE BREAKDOWN OF COCAINE IN THE BLOOD STREAM REMAINED IN THE CHILD'S BLOOD STREAM FOR HOW MANY DAYS, DOCTOR?

A. WELL, THOSE STUDIES WE WERE ACTUALLY LOOKING AT URINE. WE DID NOT MEASURE IN THE BLOOD. YOU HAVE TO BE VERY SPECIFIC HERE. BUT BABIES THAT APPEAR - WE KNOW THEY HAVE MORE IMMATURE LIVERS, SO THEY DON'T BREAK DOWN COCAINE AS RAPIDLY AS AN ADULT WOULD, SO THAT IT APPEARS THAT YOU CAN ACTUALLY FIND LEVELS OF THE BREAKDOWN MATERIALS FROM COCAINE IN THE BABY FOR ABOUT FIVE DAYS AFTER THE BABY WAS BORN.

Q. DR. CHASNOFF, ONE LAST QUESTION ON THE EFFECTS OF THE COCAINE USE IN UTERO.

**[CHASNOFF 41]**

YOU ALSO REPORTED THAT A ONE-TIME USE OF COCAINE COULD RESULT IN A STROKE TO THE BABY OR THE FETUS, TRUE?

A. YEAH. THERE ARE - AT THAT TIME THERE WERE BEGINNING REPORTS, THE FACT THAT A SINGLE USE OF COCAINE ON A SINGLE OCCASION COULD RESULT IN FAIRLY DIRE CONSEQUENCES, AS WAS SHOWN ALSO FOR AGAIN OTHER DRUGS LIKE AMPHETAMINES.

Q. IN GENERAL, DOCTOR, SUBSTANCE-ABUSING PREGNANT WOMEN AVOID GETTING PRENATAL CARE; ISN'T THAT TRUE?

A. NO, I CAN'T SAY THAT HAS BEEN SHOWN THROUGH RESEARCH.

Q. THERE IS NO DIFFERENCE BETWEEN AN AVERAGE PREGNANT WOMAN GETTING PRENATAL CARE AND A SUBSTANCE-ABUSING PREGNANT WOMAN?

A. WELL, THE DIFFICULTY IS, YOU ARE GETTING INTO SCIENTIFIC METHODOLOGY. THERE ARE STUDIES THAT SHOW IF YOU TAKE A LARGE GROUP OF WOMEN WHO GET NO PRENATAL CARE, A SIGNIFICANT NUMBER OF THOSE WOMEN HAVE USED DRUGS DURING PREGNANCY. BUT THERE IS NO STUDY - THAT'S CALLED A RETROSPECTIVE STUDY.

SCIENTIFICALLY IT IS NOT AS VALID, SEEN AS VALID, THOUGH, AS A PROSPECTIVE STUDY WHERE YOU TAKE A POPULATION OF WOMEN, DRUG USERS AND NON DRUG USERS, AND STUDY THEM PROSPECTIVELY. YOU FIND NO ONE HAS EVER DONE THAT TO KNOW IF TRULY THAT THE DECREASED RATES OF PRENATAL CARE ARE ASSOCIATED WITH THE DRUG USE OR THERE ARE OTHER FACTORS THAT - THAT ARE LEADING TO IT. BUT IT'S - IN GENERAL, ONE OF THE FACTORS THAT MAY IMPEDE PRENATAL CARE IS IF THE WOMEN IS USING DRUGS. BUT IT

**[CHASNOFF 42]**

MAY NOT BE THE DRUG USE ITSELF, IS WHAT I AM TRYING TO SAY.

Q. IN ONE OF YOUR ARTICLES DID YOU DESCRIBE ONE OF THE SIGNS THAT A PREGNANT WOMEN MAY BE USING SUBSTANCE ABUSE TO BE THAT SHE DELAYED GETTING PRENATAL CARE?

A. THAT IS A RETROSPECTIVE STUDY, YES.

Q. DR. CHASNOFF, IN 1989 YOU TESTIFIED BEFORE CONGRESS ABOUT THE MEDICAL CRISES POSED BY COCAINE USE DURING PREGNANCY, DID YOU NOT?

A. I DID TESTIFY BEFORE CONGRESS. I'M NOT - I DON'T RECALL I SAID MEDICAL CRISES, BUT-

Q. YOU DID SAY -

A. I --

Q. I'M SORRY.

A. I DON'T REMEMBER THOSE WORDS.
Q. YOU DID SAY THAT THERE WAS AN URGENT NEED TO ESTABLISH PROTOCOLS FOR EARLY RECOGNITION OF SUBSTANCE-ABUSING WOMEN AND PROVIDING TREATMENT AND INTERVENTION PROGRAMS?
A. I DID SAY THAT, YES.
Q. YOU ALSO TESTIFIED THAT THERE HAD BEEN A RAPID RISE IN REPORTED INSTANCES OF COCAINE USE DURING PREGNANCY, DID YOU NOT?
A. YES.
Q. AND THAT IN 1989 SUBSTANCE ABUSE WAS ASSOCIATED WITH APPROXIMATELY 64 PERCENT OF ALL REPORTED CHILD ABUSE CASES?
A. THAT'S RIGHT.

**[CHASNOFF 43]**

Q. AND YOU ADVOCATED IN THE LATE 1980'S THAT SOMETHING NEEDED TO BE DONE IMMEDIATELY ABOUT THE PROBLEM OF COCAINE USE DURING PREGNANCY?
A. YES.
Q. AND YOU AGREE WITH ME THAT IT WAS ESSENTIAL FOR MEDICAL PROFESSIONALS TO DEVELOP PROTOCOLS AND CRITERIA TO TEST PREGNANT WOMEN FOR COCAINE USE DURING PREGNANCY?
A. YES.
Q. AND YOU ARE NOT AN ALARMIST IN THE 1980'S ABOUT THE PROBLEMS OF COCAINE USE DURING PREGNANCY?

A. YOU ASKED THAT DIFFERENTLY THAN YOU DID LAST TIME. YES, I AM NOT AN ALARMIST.
Q. AND YOUR RESEARCH WAS NOT FAULTY?
A. OH, NO ONE HAS DONE ANYTHING TO SHOW THAT OUR RESEARCH WAS FAULTY.
Q. AND THE GOAL OF THE INTERAGENCY POLICY, AS YOU UNDERSTAND IT, WAS TO ENHANCE OUTCOMES IN PREGNANCY, TRUE?
A. THAT'S TRUE, I HAVE NO ARGUMENT WITH THE GOAL OF THE POLICY.
Q. IT WAS NOT TO PUT WOMEN IN JAIL?
A. THE STATED GOAL OF THE POLICY WAS TO ENHANCE THE OUTCOMES OF WOMEN AND CHILDREN.
Q. AND AS FAR AS THE CRITERIA THAT WERE DEVELOPED FOR THE POLICY, THEY WERE NOT IN ANY WAY BASED ON RACE; IS THAT TRUE?
A. WELL, NOW WE'RE HAVING A LITTLE BREAKDOWN HERE. I THINK

**[CHASNOFF 44]**

YOU HAVE TO - I MEAN, YOU DON'T - POLICY IS NOT DEVELOPED IN ISOLATION. AND I DON'T THINK ANYONE WHO SAT DOWN AT THE TABLE AND SAID WE'RE GOING TO DEVELOP THIS POLICY AND WE'RE GOING TO DISREGARD WHAT REALITY IS IN OUR COMMUNITY. IT IS KNOWN THAT WOMEN WHO ARE NOT GETTING PRENATAL CARE, WOMEN WHO HAVE A

RECORD OF HAVING ADMITTED TO SUBSTANCE ABUSE PREVIOUSLY, THOSE WOMEN TEND TO BE POOR AND BLACK. AND SO WHEN THAT POLICY IS SET UP IN SUCH A WAY TO SAY THAT THE CRITERIA ARE NO PRENATAL CARE OR POOR PRENATAL CARE, RIGHT FROM THE BEGINNING YOU'RE SETTING UP ONE GROUP OF WOMEN TO BE SELECTED OUT.

Q. DR. CHASNOFF, COULD YOU LOOK AT PAGE 32, LINE 18 OF YOUR DEPOSITION?

A. I'M SORRY, PAGE 32?

Q. YES, SIR. WHEN ASKED ABOUT THE CRITERIA, YOUR ANSWER AT LINE 18?

A. YOU WANT ME TO READ IT?

Q. YES, SIR.

A. BECAUSE IF YOU WERE TALKING ABOUT THESE NINE CRITERIA THAT ARE IN FRONT OF ME RIGHT NOW, RACE DOES NOT ENTER INTO ANY OF THE CRITERIA AS FAR AS WHAT IS WRITTEN ON THE PAPER.

Q. THANK YOU, DOCTOR.

YOU'RE NOT FAMILIAR WITH THE SOUTH CAROLINA CHILD ABUSE REPORTING STATUTE, ARE YOU, DOCTOR?

A. NO.

Q. AND THE IMPACT OF THE MEDICAL PRACTITIONER'S DUTY TO

**[CHASNOFF 45]**

REPORT SUSPECTED CHILD ABUSE IS NOT TAKEN INTO ACCOUNT IN YOUR

OPINIONS EXPRESSED HERE TODAY, IS IT, DOCTOR?
A. WELL - I'M NOT QUITE WITH YOU. THERE ARE - EVERY STATE - EVERY STATE MANDATES REPORTING OF CHILD ABUSE.
Q. AND YOU'RE NOT FAMILIAR WITH SOUTH CAROLINA?
A. SOUTH CAROLINA SPECIFICALLY? NO, I'M NOT.
Q. AND IF IN SOUTH CAROLINA HEALTH CARE PROFESSIONAL IS MANDATED TO REPORT SUSPECTED CHILD ABUSE AND NEGLECT, WHICH UNDER SOUTH CAROLINA LAW INCLUDES PREGNANT -
MS. DUNN: OBJECTION, YOUR HONOR, HE HAS ALREADY STATED THAT HE IS NOT COMPETENT IN THIS AREA.
MS. SHOWERS: IT GOES TO HIS OPINION, YOUR HONOR. I MEAN.
MS. DUNN: HE DIDN'T GIVE AN OPINION ABOUT THAT AREA.
THE COURT: WELL, THAT DOESN'T LIMIT HER NECESSARILY IN CROSS-EXAMINATION.
MS. SHOWERS: I JUST WANT TO ESTABLISH -
THE COURT: I'LL LET YOU ASK THE QUESTION. I THINK I KNOW WHAT YOU'RE GOING TO SAY, BUT GO AHEAD AND SAY IT.
Q. (BY MS. SHOWERS, CONTINUING) YOU DID NOT TAKE INTO ACCOUNT THE FACT THAT REPORTING COCAINE USE DURING PREGNANCY

IS MANDATORY UNDER THE SOUTH CAROLINA CHILD ABUSE STATUTE, DID YOU, DOCTOR?
A. OH, NO, I DON'T HAVE ANY INTERACTION WITH THAT.

**[CHASNOFF 46]**

Q. AND YOU AGREE WITH ME THAT GETTING SUBSTANCE-ABUSING WOMEN INTO TREATMENT IS HELPFUL TO BOTH THE MOTHER AND THE CHILD?
A. ABSOLUTELY.
Q. AND YOU WERE NOT FAMILIAR WITH THE SUBSTANCE ABUSE AVAILABLE IN CHARLESTON BETWEEN 1988 AND 1990, WERE YOU, DOCTOR?
A. NO.
Q. AND COERCIVE TREATMENT IN TERMS OF SUBSTANCE ABUSE TREATMENT IN GENERAL IS NOT SOMETHING THAT YOU'RE FAMILIAR WITH OR AN EXPERT IN, TRUE?
A. WELL, CAN WE BREAK THAT DOWN? I AM FAMILIAR WITH IT. I WOULD NOT CONSIDER MYSELF AN EXPERT IN IT.
Q. WHEN I TOOK YOUR DEPOSITION YOU TOLD ME THAT THAT WAS OUT OF YOUR AREA OF EXPERTISE?
A. THAT'S WHAT I JUST SAID, I THOUGHT.
MS. SHOWERS: YOUR HONOR, THERE IS ONE OTHER AREA THAT I WANTED TO GO INTO, BUT I WANTED TO BRING IT UP AT SIDEBAR FIRST.
THE COURT: ALL RIGHT.

(SIDEBAR AS FOLLOWS:)
MS. SHOWERS: I WANTED TO GO INTO HIS TESTIMONY BEFORE CONGRESS AND THE COST OF COCAINE EXPOSURE IN UTERO.
THE COURT: THE COST OF?
MS. SHOWERS: THE COSTS ASSOCIATED WITH IT.

* * *

**[CHASNOFF 49]**

MS. DUNN: SHE ALSO SAID THEY WERE RANDOMLY SELECTED AND IT WAS ALL AFTER THE FACT AND IT DIDN'T HAVE TO DO -
THE COURT: I'LL PERMIT TO YOU ASK THE QUESTION. I REALLY DON'T SEE ANY REAL PREJUDICE TO RESULT FROM IT, UNLESS IT COMES IN AND THEY ARGUE IT STRONGLY AS SOMETHING THEY RELIED ON.
EVERYBODY - EVERYBODY WHO KNOWS ANYTHING KNOWS THAT IF YOU HAVE A CHILD, THAT IT IS AFFECTED IN A WAY THAT HE HAS DESCRIBED BABIES COULD BE, THAT SOMEBODY IS GOING TO HAVE TO TAKE CARE OF IT AND MEDICAL COSTS ARE SO EXPENSIVE, SO IT'S A CONSIDERATION. SO I ASK THEM TO DISREGARD IT, I THINK THEY WILL BE ABLE TO DISREGARD IT. I DON'T SEE ANY INHERENT, INDELIBLE PREJUDICE RESULTING FROM IT. AND IN ORDER TO SAVE TIME, I'M GOING TO LET HIM ANSWER IT. AND THEN IF IT'S NOT

RELEVANT, WHEN YOU GET TO THE END OF THE CASE IF YOU LET ME KNOW, I'LL STRIKE IT.

MS. SHOWERS: THANK YOU, YOUR HONOR.

Q. (BY MS. SHOWERS, CONTINUING) DR. CHASNOFF, IN 1989 WHEN YOU TESTIFIED BEFORE CONGRESS YOU ESTIMATED THAT THE NATIONAL COST TO CARE FOR COCAINE EXPOSED INFANTS WOULD BE SOMEWHERE BETWEEN THREE HUNDRED EIGHTY-FIVE MILLION AND THREE BILLION DOLLARS ANNUALLY?

MS. DUNN: OBJECTION, YOUR HONOR. I DON'T BELIEVE THIS IS RELEVANT.

THE COURT: AS I STATED AT THE SIDEBAR, WE'LL JUST

**[CHASNOFF 50]**

HAVE TO WAIT AND SEE. I'M GOING TO LET THE TESTIMONY COME IN AND THEN SOME LATER DATE IF IT APPEARS THAT IT'S NOT RELEVANT TO THIS CASE, I'LL INSTRUCT YOU TO DISREGARD IT. BUT FOR THE TIME BEING IT'S IN AND YOU MAY CONSIDER IT TO SUCH EXTENT AS YOU THINK HAS RELEVANCE IN THE CASE.

YOU MAY PROCEED.

Q. (BY MS. SHOWERS, CONTINUING) AND THOSE FIGURES WERE BASED ON FIGURES THAT YOU OBTAINED FROM THE GOVERNMENT ACCOUNTING OFFICE?

A. YES.

Q. AND AT THAT TIME YOU FELT THAT THE THREE BILLION DOLLAR FIGURE MAY BE A LOW ESTIMATE AS ONLY ONE-THIRD TO ONE-FOURTH OF THE DRUG EXPOSURES WERE PICKED UP THROUGH DRUG SCREENING?

A. YES.

Q. AND THE HYPOTHESIS IN 1989 WAS THAT THE FIGURES FOR CARING FOR THESE INFANTS WAS GOING TO BE ASTRONOMICAL, TRUE?

A. TRUE.

Q. IN THE PINELLAS COUNTY STUDY THAT YOU TESTIFIED ABOUT EARLIER, ISN'T IT TRUE THAT THE DRUG RATES FOR BLACKS WERE HIGHER FOR COCAINE WHILE FOR THE WHITE WOMEN THEY WERE SHOWN MORE LIKELY TO BE ASSOCIATED WITH MARIJUANA USE?

A. THE RATES OF OVERALL ILLICIT DRUG USE, WHICH THE POLICY WAS WRITTEN FOR ALL DRUGS, WAS SIMILAR FOR BOTH BLACK AND WHITE WOMEN. BUT THE RATES OF COCAINE USE WERE HIGHER IN BLACK WOMEN. AND THE RATES OF MARIJUANA USE WERE HIGHER FOR

**[CHASNOFF 51]**

WHITE WOMEN AND ALCOHOL USE.

MS. SHOWERS: CAN I HAVE A MOMENT, YOUR HONOR, PLEASE.

THE COURT: SURE.

MS. SHOWERS: NOTHING FURTHER.

<u>REDIRECT EXAMINATION</u>

BY MS. DUNN:

Q. DR. CHASNOFF, IN ANSWERING SEVERAL OF THE QUESTIONS THAT WERE PUT TO YOU BY MS. SHOWERS, SHE ASKED YOU ABOUT DOES COCAINE CAUSE. YOUR RESPONSE OFTEN WAS, COCAINE IS ASSOCIATED WITH. WHAT IS THE DIFFERENCE BETWEEN CAUSE AND ASSOCIATED WITH?

A. WELL, IN DOING HUMAN - I MEAN, IT WOULD BE MUCH EASIER IF WE COULD JUST TAKE A BUNCH OF LITTLE BABIES RATHER, OR MOTHERS RATHER, AND GIVE HALF OF THEM COCAINE AND A HALF OF THEM NOTHING, AND YOU CAN ACTUALLY DO STUDIES OF CAUSE AND EFFECT. BUT IN HUMANS YOU CAN'T DO THOSE KIND OF STUDIES, AND SO WE HAVE TO LOOK AT LARGE GROUPS OF WOMEN WHO ARE USING A SPECIFIC SUBSTANCE OR SUBSTANCES AND GROUPS OF WOMEN THAT ARE COMPARABLE THAT ARE NOT. AND THEN YOU LOOK AT OVERALL RATES.

AND WE FIND THAT MANY OF THE COMPLICATIONS THAT WE TALKED ABOUT ARE ASSOCIATED WITH, MEANING THEY OCCUR AT HIGHER RATES. BUT WHEN YOU LOOK AT THE BIG PICTURE, WHEN YOU LOOK AT ALL OF THE STUDIES THAT WE HAVE DONE AND PUBLISHED, IF YOU TAKE ALL OF THE WOMEN WHO ARE USING COCAINE AND OTHER DRUGS,

**[CHASNOFF 52]**

AND LOOK AT THE OUTCOMES OF THEIR CHILDREN, ABOUT 25 PERCENT OF THE CHILDREN ARE AFFECTED. 75 PERCENT OF THE CHILDREN ARE NOT AFFECTED MEDICALLY. SO THAT ALTHOUGH THAT 25 PERCENT RATE IS HIGHER THAN WHAT WE WOULD BE IN THE GENERAL POPULATION, IT'S NOT A HUNDRED PERCENT.

IT GOES BACK TO THIS POLICY THEN, WHEN YOU START USING SWEEPING GENERALIZATIONS TO APPROACH EVERY PREGNANCY IN THE SAME WAY, THEN YOU'RE NOT ACCOMPLISHING ANYTHING ABOUT REACHING THE REALLY HIGHEST RISK POPULATION AND REALLY HELPING THEM.

Q. SO THAT WHEN YOU RESPONDED TO THE ENTIRE LITANY IN SAYING THAT THOSE DIFFICULTIES, YOU KNOW, LIKE ABRUPTIO PLACENTA OR THE CONGENITAL ANOMALIES WERE ASSOCIATED WITH COCAINE, WERE YOU SAYING ANYTHING MORE THAN THERE WAS AN -

MS. SHOWERS: OBJECTION.

THE COURT: THAT'S A LEADING QUESTION.

MS. DUNN: I WITHDRAW THE QUESTION.

THE COURT: DISREGARD THE QUESTION OR ANY INFERENCE YOU DRAW THEREFROM AS TO HIS ANSWER MIGHT BE.

Q. (BY MS. DUNN, CONTINUING) IN RESPONSE TO YOUR THE QUESTIONS ASKED YOU BY MS. SHOWERS, YOU TALKED ABOUT IMPAIRED

NEUROBEHAVIORAL ABILITIES AND THAT HAD AN ASSOCIATION WITH COCAINE?

A. YES.

Q. DOES YOUR RESEARCH SHOW ANYTHING ABOUT THE RELATIVE

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

**EXCERPTS FROM TESTIMONY OF DENA CLAIR**

**[CLAIR 3]**

(TESTIMONY EXCERPT OF DENA CLAIR 12-4-96.)
MS. DUNN: DENA CLAIR.

- - -

DENA CLAIR, PLF. WITNESS, SWORN.
DIRECT EXAMINATION

BY MS. DUNN:

Q. WOULD YOU STATE YOUR NAME FOR THE COURT, PLEASE.

A. DENA CLAIR.

Q. AND WHERE ARE YOU EMPLOYED?

A. DEPARTMENT OF FAMILY MEDICINE AT THE MEDICAL UNIVERSITY.

Q. WHAT DO YOU DO THERE?

A. I'M A REGISTERED NURSE.

Q. AND AS A REGISTERED NURSE IN THAT PROGRAM, WHAT ARE YOUR -- WHAT ARE YOUR JOBS?

A. MY MAIN RESPONSIBILITY IS PATIENT EDUCATION.

Q. WHAT DO YOU DO IN THAT CAPACITY?

A. I COUNSEL PATIENTS WITH CERTAIN DISEASES. I DO PRENATAL COUNSELING WITH OUR PATIENTS THAT WE FOLLOW WHO ARE PREGNANT.

Q. CAN YOU TELL US WHAT THE DEPARTMENT OF FAMILY MEDICINE IS WITHIN THE MEDICAL UNIVERSITY?

A. FAMILY MEDICINE IS A RESIDENCY PROGRAM FOR DOCTORS WHO ARE TRAINED TO BE FAMILY PHYSICIANS. WE HAVE 40 SOME ODD RESIDENTS AT DIFFERENT LEVELS OF TRAINING, AND WE HAVE FACULTY WHO ARE THEIR INSTRUCTORS, AND WE HAVE SEVERAL NURSES THAT

* * *

**[CLAIR 5]**

MEDICAL UNIVERSITY?
A. THAT'S RIGHT.
Q. AND PART-OF ALL OF ITS POLICIES?
A. THAT'S RIGHT.
Q. DID YOU WORK AT THE DEPARTMENT OF FAMILY MEDICINE IN THE FALL OF 199?
A. I DID.
Q. AND IN THE FALL OF 1989, WHAT WAS YOUR JOB THERE?
A. I WAS DOING WHAT I DO NOW, PATIENT EDUCATION.
Q. WERE YOU AWARE OF ANY SPECIAL TRAINING THAT WAS PROVIDED TO THE RESIDENTS AT FAMILY MEDICINE TO APRISE THEM OF A NEW POLICY THAT HAD BEEN ADOPTED RELATING TO THE TESTING OF COCAINE AND PRENATAL CARE?
A. THEY WOULD HAVE BEEN INFORMED OF THE POLICY DURING MY BRIEF ORIENTATION WITH THEM. I -- THAT'S ALL I KNOW. I DON'T KNOW OF ANY OTHER TRAINING THAT WOULD HAVE BEEN DONE.
Q. DID YOU SEND OUT ANY MEMOS THAT

A. YES, I DID.
Q. TO THE RESIDENTS?
A. IN 1989?
Q. 1989, DID YOU SEND OUT-
A. I DON'T KNOW IF I DID OR NOT. I DIDN'T HAVE ANYTHING TO - IN MY FILES TO THAT.
Q. DO YOU RECALL IF YOU GOT ANY VIDEOS TO SHOW?
A. I DO HAVE VIDEOS. I DON'T KNOW WHEN I RECEIVED THEM.

**[CLAIR 6]**

Q. DO YOU HAVE ANY IDEA WHEN YOU RECEIVED THEM?
A. NO, I DON'T.
Q. DO YOU RECALL ANY SPECIFIC TRAINING THAT WAS PROVIDED TO THE RESIDENTS IN TERMS OF WHAT THE PURPOSE OR THE GOALS OF THE POLICY MIGHT HAVE BEEN?
A. I DON'T KNOW ANYTHING ABOUT THAT.
Q. DO YOU HAVE KNOWLEDGE OF ANY SPECIFIC PROVISIONS THAT ARE IN PLACE TO PROTECT THE CONFIDENTIALITY OF YOUR PATIENTS' RECORDS?
A. IT'S THE PATIENT CONFIDENTIALITY CODE THAT WE HAVE ALWAYS FOLLOWED. THE PATIENTS' RECORDS ARE HELD IN CONFIDENCE AND -- UNLESS WE HAVE WRITTEN PERMISSION TO SHOW THEM TO ANYONE.
Q. DO YOU HAVE WORKING AT FAMILY MEDICINE, ON SITE, ANYONE WHO HAS SPECIFIC TRAINING IN SUBSTANCE ABUSE COUNSELING?

A. YES, WE DO.
Q. AND WHO IS THAT?
A. HER NAME IS MARTHA THOMLIN.
Q. DID SHE WORK AT FAMILY MEDICINE IN THE FALL OF 1989?
A. I THINK SO. I'M NOT SURE. I THINK SO.
Q. DOES SHE STILL WORK THERE NOW?
YES, SHE DOES..
Q. ISN'T MS. THOMLIN FULLY CAPABLE OF WORKING WITH YOUR PRENATAL PATIENT IN TERMS OF EVALUATING AND MAKING REFERRALS FOR THEM ON SUBSTANCE ABUSE TREATMENT IF THEY NEED IT?
A. I WOULD ASSUME THAT SHE IS, BASED ON HER CREDENTIALS.

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**[CLAIR 8]**

A. YES, I DO.
Q. WHAT IS IT?
A. IT'S A MEMO THAT I WROTE TO FACULTY RESIDENTS AND STAFF RELATING TO THE MEDICAL UNIVERSITY POLICY ABOUT SUBSTANCE ABUSE AND PREGNANCY.
Q. HAVE YOU EVER WRITTEN ANY OTHER MEMOS ABOUT THIS POLICY, TO THE BEST OF YOUR KNOWLEDGE?
A. YES, I HAVE.
Q. DID YOU KEEP ANY OF THOSE?
A. YES, I DID.
Q. PARDON?
A. YES, I DID.
Q. WHEN DID YOU WRITE THIS MEMO?
A. NOVEMBER 1, 1993.
Q. AND DO YOU RECALL WHY YOU WROTE THAT MEMO?

A. NOT SPECIFICALLY, OTHER THAN AS I STATED IN IT, I HAVE RECENTLY HAD MANY QUESTIONS RELATED TO THIS POLICY AND I WAS RESPONDING TO THOSE QUESTIONS.
Q. AND WHAT WERE THOSE QUESTIONS?
A. I DON'T RECALL SPECIFICALLY OTHER THAN DOES IT APPLY TO FAMILY MEDICINE.
Q. AND WERE THERE CONCERNS WITHIN FAMILY MEDICINE RELATING TO THIS POLICY?.
A. THERE WERE QUESTIONS RELATING TO THE POLICY.
Q. AND WHAT WERE THE QUESTIONS?

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**[CLAIR 10]**

MS. DUNN: GIVE IT BACK TO HER.
THE COURT: I WOULD GIVE IT TO THE CLERK AND LET HER MARK IT.
DEPUTY CLERK: PLAINTIFF'S EXHIBIT 126 IN EVIDENCE.
Q. (BY MS. DUNN, CONTINUING) MS. CLAIR, DOES THIS DOCUMENT THAT YOU HAD IN FRONT OF YOU REFER TO THE INTERAGENCY POLICY?
A. YES, IT DOES.
Q. DOES IT REFER TO ANY - TO THE SCREENING FOR ANY DRUGS OTHER THAN COCAINE?
A. IT DOESN'T SPECIFY THAT, BUT IT DID NOT APPLY TO ANYTHING OTHER THAN COCAINE.
Q. DOES THE DOCUMENT THAT YOU HAVE IN FRONT OF YOU REFER TO

WHOM THE POSITIVE DRUG SCREENS MUST BE REPORTED?
A. IT DOES.
Q. AND WHO IS THAT?
A. TO SHIRLEY BROWN.
Q. WHY SHIRLEY BROWN?
A. SHIRLEY AT THAT TIME, WAS THE CASE MANAGER FOR OB/GYN AT THE MEDICAL UNIVERSITY.
Q. DID SHIRLEY BROWN NECESSARILY HAVE ANY OTHER RELATIONSHIP WITH YOUR PATIENTS AT FAMILY MEDICINE?
A. ONCE OUR PATIENTS ARE ADMITTED TO THE HOSPITAL THEN SHE WOULD. I DON'T KNOW - I DON'T KNOW OF ANY OTHER RELATIONSHIP.
Q. WOULD SHIRLEY BROWN HAVE HAD ANY DIRECT INVOLVEMENT IN

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**[CLAIR 13]**

THE COURT: IS THERE A CHANGE?
MS. DUNN: THIS IS NOT A CHANGE.
MS. SHOWERS: THERE IS NOT ANY CHANGE ON THIS MEMO.
THE COURT: WHY WOULD IT BE REMEDIAL?
MS. SHOWERS: IT CAME OUT WHEN THE OCR CAME TO THE HOSPITAL.
THE COURT: JUST BECAUSE IT'S DATED, IF THEY DON'T KNOW ABOUT THAT AND DON'T CHANGE IT, WHY IS IT REMEDIAL?

MS. SHOWERS: AS LONG AS SHE IS NOT GOING TO BRING THAT INTO IT.

THE COURT: ALL SHE HAS DONE IS INTRODUCE THOSE DOCUMENTS WITHOUT OBJECTION.

GO AHEAD.

Q. (BY MS. DUNN, CONTINUING) DO YOU HAVE THOSE TWO DOCUMENTS - DID YOU END UP WITH THEM IN FRONT OF YOU?

A. I DO.

Q. AND YOU HAVE TESTIFIED THAT YOU WROTE BOTH OF THESE DOCUMENTS?

A. I DID.

Q. AND IN REFERENCE TO SPECIFICALLY DOCUMENT 127?

A. UH-HUH.

Q. THIS IS A MEMO THAT IS ADDRESSED TO JOHN SANDERS, WHO IS THE HOSPITAL ADMINISTRATOR; IS THAT CORRECT?

A. THAT'S RIGHT.

Q. DO YOU RECALL WHY YOU WROTE THIS MEMO?

**[CLAIR 14]**

A. WE HAD BEEN ASKED TO - WE HAD BEEN ASKED TO SUBMIT A PLAN TO ADMINISTRATION STATING HOW THE POLICY WOULD BE IMPLEMENTED WITHIN OUR CENTER OR HOW -WELL, HOW IT WAS IMPLEMENTED WITHIN OUR CENTER.

Q. AND THE DATE OF THIS WAS MARCH 3, 1994?

A. THAT'S RIGHT.

Q. AND WHY WERE YOU INVOLVED IN THAT?
A. I HAD BEEN TO A MEETING AS A REPRESENTATIVE FROM OUR DEPARTMENT RELATED TO THE POLICY. I'M NOT SURE WHY I WAS ASKED BUT I WAS. AND I JUST ASSUMED RESPONSIBILITY FOR DOING IT.
Q. AND WHEN WAS THE DATE OF THAT MEETING?
A. I DON'T RECALL THE DATE. IT WAS SOMETIME RIGHT AFTER THIS.
Q. DO YOU RECALL ATTENDING ANY - ANY MEETINGS EARLIER THAN AROUND THE TIME OF 1994 IN WHICH YOU DISCUSSED HOW THE POLICY WOULD BE APPLIED AT FAMILY MEDICINE?
A. ANYTIME BETWEEN '89 AND '94?
Q. YES.
A. I RECALL AT SOME POINT, BUT I DON'T REMEMBER SPECIFICALLY WHEN. I DON'T KNOW DATES.
Q. DID YOU HAVE ANY MEMOS IN CONNECTION WITH THAT?
A. NO, I DIDN'T.
Q. AND CALLING YOUR ATTENTION TO EXHIBIT NUMBER 128.
A. UH-HUH.

**[CLAIR 15]**

Q. WHAT IS THIS DOCUMENT?
A. IN 127 I HAD STATED LET'S SEE, IN ORDER TO IMPLEMENT THE POLICY I WOULD INFORM ALL RESIDENTS, FACULTY AND CLINICAL

STAFF OF THE POLICY BY MEMORANDUM. AND THIS IS THE MEMORANDUM THAT FOLLOWED THAT.

Q. AND WHO DID IT GO TO?

A. THIS WENT TO ALL OF OUR RESIDENT PHYSICIANS, OUR FACULTY AND CLINICAL STAFF.

Q. AND THIS, AGAIN WAS DATED IN 1994?

A. THAT'S RIGHT.

MS. DUNN: I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: CROSS-EXAMINATION.

MS. SHOWERS: THANK YOU, YOUR HONOR.

CROSS-EXAMINATION

BY MS. SHOWERS:

Q. MS. CLAIR, YOU'RE A REGISTERED NURSE; IS THAT RIGHT?

A. THAT'S RIGHT.

Q. AND CAN YOU TELL THE JURY HOW LONG YOU HAVE BEEN EMPLOYED AT THE MEDICAL UNIVERSITY DEPARTMENT OF FAMILY MEDICINE?

A. ABOUT NINETEEN YEARS.

Q. AND IN YOUR ROLE AT THE FAMILY MEDICINE CENTER, YOU IMPLEMENTED THE INTERAGENCY POLICY; IS THAT TRUE?

A. YES, I DID.

Q. TELL THE JURY, IS THAT PRIOR TO 1993?

A. IT WAS IMPLEMENTED BEFORE THAT, YES.

**[CLAIR 16]**

Q. AND CAN YOU DESCRIBE YOUR ROLE WITH THE POLICY?

A. PATIENTS - ALL OB PATIENTS ARE REFERRED TO ME FOR PRENATAL CARE. AND SINCE THERE WERE SPECIFIC THINGS OUTLINED IN THE POLICY AS FAR AS THE FILM AND COUNSELING THAT WAS INVOLVED, THAT BECAME OUR RESPONSIBILITY TO DO THAT.

Q. YOU SHOWED THE FILM EXPLAINING -

A. YES.

Q. EXPLAINING THE HARMFUL EFFECTS OF DRUG USE DURING PREGNANCY?

A. I DID.

Q. AND, MS. CLAIR, ARE YOU FAMILIAR WITH THE SOUTH CAROLINA CHILD ABUSE STATUTE?

A. YES, I AM.

Q. WHAT ARE THE REQUIREMENTS FOR YOU AS A HEALTH CARE PROFESSIONAL?

A. TO REPORT SUSPICIONS OF CHILD ABUSE.

Q. AND IS IT YOUR UNDERSTANDING IN YOUR ROLE AT THE MEDICAL UNIVERSITY THAT YOU ARE REQUIRED TO REPORT POSITIVE URINE DRUG SCREENS FOR COCAINE IN PREGNANT WOMEN?

A. BASED ON THE POLICY?

Q. YES.

A. YES.

MS. SHOWERS: NOTHING FURTHER.

THE COURT: ANY REDIRECT?

MS. SHOWERS: COULD I JUST HAVE ONE MOMENT, YOUR

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

**EXCERPTS FROM TESTIMONY OF CHARLES CONDON**

**[CONDON 4]**

AND BECOMING AN ATTORNEY LICENSED TO PRACTICE IN THIS STATE, WHERE DID YOU PRACTICE?

A. THE FIRST JOB THAT I HAD WAS WITH A BIG LAW FIRM IN COLUMBIA CALLED NEXIN, PRUIT, JACOBS AND POLLARD FOR ABOUT A YEAR.

Q. ALL RIGHT, SIR. IF YOU WILL, JUST TAKE US THROUGH YOUR CAREER UP UNTIL NOW, PLEASE?

A. WELL, I LEFT THAT POSITION AND TOOK AN APPOINTMENT HERE IN CHARLESTON AS AN ASSISTANT SOLICITOR IN THE CHARLESTON COUNTY COURTHOUSE ACROSS THE STREET. AND ABOUT A YEAR LATER I RAN FOR CIRCUIT SOLICITOR OF THE NINTH JUDICIAL CIRCUIT. AND WAS ELECTED IN 1981 AND SERVED IN THAT POSITION UNTIL 1992. THEN WENT INTO PRIVATE PRACTICE FOR ABOUT A YEAR AND A HALF, TWO YEARS, AND THEN WAS ELECTED ATTORNEY GENERAL IN SOUTH CAROLINA. AND I HAVE BEEN IN THIS POSITION FOR ABOUT TWO YEARS NOW.

Q. AND HOW LONG IS YOUR TERM?

A. IT'S A FOUR-YEAR TERM.
Q. AND YOU'RE UP FOR REELECTION WHEN?
A. TWO YEARS FROM NOW, 1998.
Q. ALL RIGHT. MR. CONDON, THE POLICY THAT IS AT ISSUE IN THIS CASE, I WOULD LIKE FOR YOU TO TAKE THE JURY THROUGH THE EVOLUTION OF YOUR INVOLVEMENT IN THE POLICY THAT ULTIMATELY BECAME ADOPTED AT THE MEDICAL UNIVERSITY, JUST IN YOUR OWN WORDS?

**[CONDON 5]**

A. SURE. WELL, THE FIRST TIME THAT I EVEN HEARD OF COCAINE USE OR CRACK COCAINE USE DURING PREGNANCY, I WENT TO A DISTRICT ATTORNEYS' MEETING IN SEATTLE, WASHINGTON. THAT'S AN ASSOCIATION OF DISTRICT ATTORNEYS FROM AROUND THE COUNTRY. AND AT THAT MEETING THERE WERE SEVERAL BIG CITY DISTRICT ATTORNEYS THAT TALKED ABOUT THIS NEW PROBLEM THEY WERE FACING, THE BIGGER CITIES IN THIS COUNTRY, OF CRACK COCAINE USE DURING PREGNANCY. AND I BELIEVE THAT THAT WAS IN THE LATTER PART OF 1988. I REALLY DISMISSED IT FROM MY MIND BECAUSE I JUST ASSUMED, WRONGLY AT THE TIME, THAT THAT WOULD JUST BE A BIG CITY PROBLEM, THAT COULDN'T POSSIBLY OCCUR IN SOUTH CAROLINA AND CERTAINLY NOT IN CHARLESTON.

FASTFORWARDING I GUESS SIX OR SEVEN OR EIGHT MONTHS LATER, I WAS CONTACTED BY THE MEDICAL UNIVERSITY OF SOUTH CAROLINA ABOUT THEIR HAVING A REAL CRISES WITH CRACK COCAINE USE DURING PREGNANCY. THAT IT WAS OVERWHELMING THEIR HOSPITAL AND THAT THEY WERE FINDING LOTS OF LITTLE CHILDREN, LITTLE BABIES WHO WERE BEING DAMAGED BY CRACK COCAINE USE. AND THEY CONTACTED ME FOR ASSISTANCE. AND WHAT HAPPENED FROM THERE, YOU HAVE TO REMEMBER THE MINDSET AT THIS TIME WAS, THIS WAS VERY NEW, THIS WAS A SITUATION WE DON'T KNOW HOW TO DEAL WITH THIS, WE HAVE BEEN TRYING TO USE AN EDUCATIONAL APPROACH, THEY INFORMED ME, FOR ABOUT A YEAR. THEY WOULD TELL THE LADIES THAT CRACK COCAINE USE WOULD BE DANGEROUS DURING PREGNANCY.

MR. WHERRY: OBJECTION, THIS IS DOUBLE HEARSAY.

* * *

**[CONDON 7]**

HIM, NOT THEIR TRUTH, BUT FOR THAT PURPOSE ALONE, YOU CAN CONSIDER THIS EVIDENCE.

OKAY. YOU MAY PROCEED.

Q. (BY MR. HOOD, CONTINUING) ATTORNEY GENERAL CONDON, YOU WERE TELLING US ABOUT WHAT YOU WERE INFORMED. PLEASE CONTINUE.

A. YES, THE INFORMATION THAT I HAD RECEIVED IS THAT THEY HAD USED AN EDUCATIONAL MODEL FOR ABOUT A YEAR. THEY INFORMED THE LADIES ABOUT THE DANGERS OF CRACK COCAINE USE DURING PREGNANCY. MADE FREE DRUG TREATMENT AVAILABLE TO THEM, AND NO ONE WENT THERE MAY HAVE BEEN ONE PERSON THAT WENT MAYBE ONE TIME TO ONE FREE DRUG TREATMENT APPOINTMENT. AND THE EPIDEMIC CONTINUED. IN FACT, I WAS TOLD THAT THERE HAD BEEN A NUMBER OF PEOPLE WHO WERE ON THEIR SECOND CRACK BABY, IN EFFECT.

SO, WHAT I DID IS I WENT DOWN TO THE MEDICAL UNIVERSITY AND LOOKED AT THE SITUATION FIRSTHAND IN TERMS OF GOING THROUGH THEIR NEONATAL UNIT. AND WHEN YOU WENT IN THERE, IT WAS VERY OBVIOUS THAT THERE WAS A REAL CRISES. THERE WERE BABIES IN LITTLE IC UNITS, ALL OVER THE PLACE. IT WAS A PROBLEM TO MY MIND THAT WAS TOTALLY PREVENTABLE, SHOCKING AND VERY DAMAGING TO INNOCENT LITTLE BABIES HERE IN CHARLESTON.

SO WHAT I DID WITH THAT INFORMATION I CONTACTED EVERYONE THAT I COULD THINK OF THAT WOULD HAVE A ROLE IN HELPING TO SOLVE THE PROBLEM. CONTACTED THE POLICE CHIEF

CONTACTED THE PEOPLE WHO RAN THE DEPARTMENT OF SOCIAL SERVICES, CONTACTED THE PEOPLE AT SUBSTANCE ABUSE, CONTACTED MEDICAL UNIVERSITY OFFICIALS, AND WE HAD A MEETING WITH THE INTENTION OF DEVELOPING A MULTIDISCIPLINARY APPROACH TO THIS PROBLEM TO HELP SOLVE IT.

AND I CAN TELL YOU WE LOOKED AT A NUMBER OF DIFFERENT WAYS TO SOLVE IT. THE FIRST THOUGHT THAT CROSSED MY MIND WOULD BE TO GO TO THE PROBATE COURT. IN OUR SYSTEM OF LAW THE PROBATE JUDGE HAS THE POWER TO COMMIT PEOPLE WHO ARE A DANGER TO THEMSELVES OR OTHERS THROUGH THE USE OF DRUGS. BUT MY OFFICE WAS TOLD THAT PROBATE JUDGE --

MR. WHERRY: OBJECTION. THIS HAS TO BE BEING OFFERED FOR THE TRUTH WHAT HE WAS TOLD ABOUT THE PROBATE JUDGE.

THE COURT: WHAT ABOUT THAT, MR. HOOD?

MR. HOOD: THEY BROUGHT THIS ISSUE UP, YOUR HONOR. AND WHAT WE BASICALLY WANT TO DO IS ESTABLISH WHAT WAS AVAILABLE, WHAT THE ALTERNATIVES WERE AND WHAT WENT THROUGH THE SOLICITOR'S MIND IN FORMULATING THE POLICY AND TRYING TO DEAL WITH THIS PROBLEM.

THE COURT: WELL, THE FACT THAT THEY BROUGHT IT UP DOESN'T AFFECT THE QUESTION OF HEARSAY.

MR. HOOD: YES, SIR.

THE COURT: AND IF YOUR OBJECTIVE IS TO PROVE WHAT WAS AVAILABLE, THEN THAT MEANS THAT IT'S BEING OFFERED FOR THE

**[CONDON 9]**

TRUTH.

MR. HOOD: WE WANT TO PROVE WHAT HE WAS INFORMED THROUGH HIS STAFF AND HIS OWN EFFORTS WHAT WAS AVAILABLE, NOT FOR ITS TRUTH, BUT THIS IS WHAT HE PERCEIVED THE BASIC SITUATION WAS IN THIS COMMUNITY AT THE TIME TO DEAL WITH ITS PROBLEM. IT'S NO DIFFERENT THAN A DOCTOR EXAMINING A PATIENT --

THE COURT: I UNDERSTAND. I UNDERSTAND.

MR. HOOD: ASSUMING ALL OF THE DIFFERENT PROBLEMS. THAT'S WHAT HE IS SAYING.

THE COURT: AGAIN, LADIES AND GENTLEMEN, I THINK YOU UNDERSTAND THE PROBLEM WITHOUT ME REPEATING IT. AND AGAIN LET ME CAUTION YOU THAT THIS EVIDENCE IS BEING RECEIVED NOT FOR ITS TRUTH, BUT JUST FOR THE FACT THAT THESE STATEMENTS WERE MADE TO MR. CONDON, SO THAT YOU WILL KNOW WHAT WAS IN HIS HEAD

AND THEREFORE YOU CAN HAVE A BETTER CHANCE OF DETERMINING WHAT HIS INTENT WAS IN THE PROCEEDINGS THAT WE HAVE.

OKAY. YOU MAY PROCEED.

A. SO WE CONTACTED THE PROBATE JUDGE'S OFFICE, JUDGE FIELDING, AND WAS TOLD VERY FORCEFULLY THERE WERE NO FACILITIES FOR THEM TO BE INVOLVED WITH AND THEY DIDN'T WANT TO BE INVOLVED. AND THAT THAT WOULD NOT BE AN OPTION IN TERMS OF HELPING TO PROTECT THESE LITTLE BABIES.

SO THE OTHER THOUGHT OCCURRED, WELL, THE DEPARTMENT OF SOCIAL SERVICES, WHICH WOULD BE A VERY NATURAL WAY TO GO IN

**[CONDON 10]**

TERMS OF PROTECTING THESE LITTLE BABIES. BUT AT THE MEETING THAT WE HAD AT THE MEDICAL UNIVERSITY IT BECAME VERY OBVIOUS THAT THE OFFICIAL POLICY OF THE DEPARTMENT OF SOCIAL SERVICES WOULD BE THAT THEY WOULD NOT TAKE JURISDICTION OVER UNBORN CHILDREN FROM THEIR PERSPECTIVE.

SO HERE WE WERE WITH LOTS OF LITTLE BABIES WHO WERE BEING DAMAGED THROUGH THE USE OF AN ILLEGAL DRUG, THE POSSESSION OF WHICH IS A FELONY IN SOUTH CAROLINA. AND THE PROBLEM PRESENTED TO US AT THAT TIME WOULD BE IS, HOW TO HELP

THESE BABIES AND HOW TO STOP THE TOTALLY PREVENTABLE DAMAGE BEING DONE TO THESE INNOCENT LITTLE CHILDREN.

SO, WE MET. AND THE FORCEFUL PEOPLE IN TERMS OF TALKING IN TERMS OF LEGAL INTERVENTION WERE THE DRUG TREATMENT PEOPLE. THE IDEA FROM THEIR PERSPECTIVE, IN FACT THEY SORT OF MOCKED US, WHY DO YOU EXPECT THEM TO DO ANYTHING HAVING SOME SORT OF CONSEQUENCE TO THEIR ACTION, MUCH LIKE AA WOULD HAVE IN TERMS OF BEING RESPONSIBLE FOR WHAT YOU DO.

SO WE DEVELOPED AT THAT TIME, WE GOT INVOLVED AT THE REQUEST OF THE MEDICAL UNIVERSITY WITH A MULTIDISCIPLINARY APPROACH TO SOLVING THIS CRISES. AND IT WENT FROM THERE.

Q. ALL RIGHT, SIR. AND AS THE POLICY-EVOLVED, HOW WOULD YOU CHARACTERIZE THE POLICY ITSELF? WHAT WAS GOING TO HAPPEN TO THESE WOMEN?

A. THE POLICY FROM ITS INCEPTION WAS AMNESTY-BASED. I MEAN, THE IDEA HERE WAS THAT IF YOU LIVED UP TO SOME VERY BASIC

**[CONDON 11]**

REQUIREMENTS, NUMBER ONE BEING DRUG FREE, DON'T TAKE THE ILLEGAL COCAINE, AND, NUMBER TWO, IF YOU WOULD GO TO FREE DRUG

TREATMENT, NOT A THING WOULD HAPPEN TO YOU.

NOW, INITIALLY THE WAY WE DEVELOPED THE POLICY IS THAT WE WANTED TO GET INVOLVED AS EARLY AS POSSIBLE TO PREVENT HARM TO THE CHILDREN.

AS A COROLLARY TO THAT OR THE OPPOSITE TO THAT THINKING WAS INITIALLY IS IF THE DAMAGE IS ALREADY DONE, THAT IS IF THE BABY IS BORN DAMAGED BY COCAINE, SINCE THE DAMAGE IS ALREADY DONE, AND THAT COULDN'T BE PREVENTED, TO TREAT THAT SEPARATELY WITH A NORMAL CRIMINAL ARREST PROCESS.

THERE IS A STATUTE THAT REQUIRES HEALTH CARE PROFESSIONALS TO REPORT CHILD ABUSE. AND THE INITIAL THINKING THE FIRST COUPLE OF MONTHS WAS THAT THERE WOULD BE A DISTINCTION. WHEN IT WAS IN UTERO, THE CHILD IN UTERO, IF YOU COULD PREVENT THE HARM, IT WAS A TOTALLY AMNESTY-BASED PROGRAM. AFTER THAT IF THE CHILD WAS BORN WITH CRACK COCAINE, USE THE NORMAL ARREST FUNCTIONS OF THE CRIMINAL JUSTICE SYSTEM AND TREAT IT LIKE A REGULAR CRIMINAL CASE.

WE QUICKLY CHANGED THAT POLICY AT THE REQUEST OF THE DOCTORS, PRIMARILY THE NEONATOLOGISTS AT MUSC BECAUSE THEY THOUGHT THERE WAS ADDICTION THERE.

MR. WHERRY: YOUR HONOR, THAT'S HEARSAY ALSO. CLEARLY THIS IS OFFERED FOR THE TRUTH.

THE COURT: I THINK THAT IT FALLS WITHIN THE SAME

**[CONDON 12]**

CATEGORY. IT'S BEEN CONTENDED THAT HE HAD CONSIDERABLE INFLUENCE IN THE DEVELOPMENT OF THIS POLICY. WHETHER THAT'S TRUE OR NOT IS FOR THE JURY TO DETERMINE. BUT -- AND THERE HAS ALSO BEEN TESTIMONY THAT THE POLICY WAS CHANGED FROM TIME TO TIME. AND I THINK THAT WHAT IS IN HIS MIND, WHAT CAUSES HIM TO ACT AS HE ACTED, IS SOMETHING THAT THE JURY IS ENTITLED TO KNOW.

AND SO, AGAIN, THIS IS NOT OFFERED FOR ITS TRUTH. IT MAY BE FALSE, IT MAY BE TRUE, BUT IT'S NOT OFFERED FOR THAT. AND HE CAN'T VOUCH FOR ITS TRUTH, AND THEREFORE IT'S NOT ADMITTED FOR ITS TRUTH. IT'S ADMITTED BECAUSE IT WAS TOLD TO HIM. AND THAT'S THE ONLY VALUE THAT IT HAS AT THIS TIME.

NOW IF THESE FACTS ARE PROVED BY SOMEONE ELSE THAT HAS KNOWLEDGE, THAT'S A DIFFERENT MATTER. BUT COMING FROM HIM, THEY HAVE RELEVANCE ONLY BECAUSE THE STATEMENTS WERE MADE TO HIM AND CAN BE CONSIDERED ONLY FOR THAT BY YOU.

YOU MAY PROCEED.
MR. HOOD: THANK YOU, YOUR HONOR.
Q. (BY MR. HOOD, CONTINUING) THE NEONATOLOGIST YOU WERE MENTIONING?
A. YES. THEY FELT THAT WE HAD A DISTINCTION WITHOUT AREAL DIFFERENCE. CONFUSING MESSAGES BEING SENT OUT AND IT WAS HARD TO EXPLAIN THE DIFFERENCE BETWEEN A CHILD BEING BORN 24 HOURS EARLIER AND WE'RE GIVING COMPLETE AMNESTY. SO AT THE REQUEST OF OFFICIALS AT MUSC WE CHANGED THE POLICY TO HAVE AMNESTY FOR

**[CONDON 13]**

EVERYBODY. THAT IT WAS TOTALLY AN AMNESTY-BASED PROGRAM.
IN FACT WE DEVELOPED A PUBLIC SERVICE ANNOUNCEMENT WITH A NUMBER TO CALL, THAT IF YOU HAD A DRUG PROBLEM, LET US COME IN TO TRY AND HELP YOU. YOU WOULD BE GIVEN COMPLETE AMNESTY, NO ARRESTS. BUT WE DID INSIST. AND THIS WAS THE WHOLE PURPOSE HERE, THAT YOU HAD TO STOP USING THE CRACK COCAINE SO THAT YOU WOULDN'T HURT YOUR OWN LITTLE BABY.
AND I FELT VERY STRONGLY THAT WE HAD AN OBLIGATION AS THE OFFICIALS HERE IN CHARGE OF LAW ENFORCEMENT IN TERMS OF PROTECTING INNOCENT CHILDREN, THAT WE HAD TO DO SOMETHING TO

STEP IN THERE TO USE WHATEVER MEANS THAT WE COULD WITHIN THE LAW TO SIMPLY GET THEM TO STOP USING A DRUG, THE POSSESSION OF WHICH WAS A FELONY, THAT WOULD HURT INNOCENT CHILDREN.

SO, WE WERE TRYING TO USE A CARROT-AND-STICK APPROACH. AND IN TERMS OF OUR DUTIES, OF COURSE I GUESS ANY SOLICITOR'S OFFICE OR DISTRICT ATTORNEY'S OFFICE IS VERY BUSY. AND IT WAS UNUSUAL TO BE CONTACTED BY HEALTH CARE OFFICIALS, BUT WE MONITORED VERY CAREFULLY WITH MUSC TO KEEP ASKING THE QUESTION, IS THIS HELPING, IS THIS HELPING STEM THE TIDE, IS IT HELPING TO PROTECT LITTLE CHILDREN. AND WE WOULD ROUTINELY BE TOLD THAT IT WAS.

MR. WHERRY: OBJECTION, HEARSAY. OBJECTION, HEARSAY. WE CONTINUE TO BE TOLD DOT, DOT, DOT.

THE COURT: OKAY. GO AHEAD, MR. CONDON.

A. SO THE REPORTS BACK WERE THAT IN EFFECT THE STRONGEST

**[CONDON 14]**

ADVOCATES WERE THE NEONATOLOGISTS WHO WERE SAYING IT WAS VERY HELPFUL IN TERMS OF PROTECTING CHILDREN, THAT THEY FELT IT WAS DECREASING THE PROBLEM THEY WERE DEALING WITH, AND IT WAS VERY

HELPFUL IN TERMS OF PROTECTING INNOCENT CHILDREN. AND IT WAS NOT A PROSECUTION PROGRAM, IT WAS AN AMNESTY-BASED PROGRAM TO GET THEM TO CHANGE BEHAVIOR, WHICH WE USED ROUTINELY IN THE CRIMINAL JUSTICE SYSTEM FOR OTHER TYPES OF PROBLEMS.

THE COURT: I THINK IT FALLS WITHIN THE SAME CATEGORY AND WITH THE SAME LIMITING INSTRUCTIONS. I'M GOING TO OVERRULE YOUR OBJECTION.

Q. (BY MR. HOOD, CONTINUING) IN THAT VEIN, MR. CONDON, DID YOU WANT TO HAVE THESE WITNESSES THAT TURNED OUT, 253 OF THEM TESTED OUT POSITIVE UNDER THIS POLICY, DID YOU WANT TO HAVE THEM ARRESTED AND PUT IN JAIL?

A. THE -- THE ENTIRE PROTOCOL THAT WAS DEVELOPED FROM THE BEGINNING, AND AS I SAID WE HAD EVERYONE I COULD IMAGINE COULD BE AFFECTED WITH THE POLICY, IN FACT WE HAD THE PUBLIC DEFENDER COME AND TALK AT SOME POINT IN DEVELOPING FURTHER TREATMENT FACILITIES THAT MIGHT BE HELPFUL FOR INPATIENTS, BUT THE IDEA WAS NOT PROSECUTION -- IT WAS NOT MATERNAL PROSECUTION, IT WAS FETAL PROTECTION.

NOW WE DID INITIALLY HAVE THIS ASPECT OF PROTOCOL WHEREBY PEOPLE WERE ARRESTED IN THE FIRST FEW MONTHS OF THE PROGRAM. ONCE THE DAMAGE HAD BEEN DONE IN OUR VIEW. BUT THAT

QUICKLY CHANGED AND WE FELT AS IF WE WERE MAKING A REAL

**[CONDON 15]**

DIFFERENCE IN THE LIVES OF THESE LITTLE CHILDREN.

Q. MR. CONDON, YOU'RE A NAMED DEFENDANT IN THIS CASE AND SO I'M GOING TO GO TO SEVERAL OTHER MATTERS. THE FIRST OF ALL WHY DID YOU -- WHY WAS THE MEDICAL UNIVERSITY THE FACILITY WHERE THIS POLICY WAS IMPLEMENTED?

A. WHEN YOU LOOKED INTO THE SITUATION, YOU LEARNED THAT UNIQUELY IN THIS PART OF SOUTH CAROLINA THE MEDICAL UNIVERSITY WOULD BE THE POINT AT WHICH DAMAGED COCAINE BABIES WOULD EVENTUALLY HAVE TO GO BECAUSE IT WAS THE ONLY FACILITY WITH NEONATOLOGISTS, THAT IS DOCTORS THAT SPECIALIZE IN NEWBORNS, AS WELL AS AN INTENSIVE CARE UNIT FOR NEWBORNS. SO I WAS CONTACTED BY THEM, THEY HAD THIS CRISES ON THEIR HANDS. AND IN TERMS OF BEING CONCERNED ABOUT THE LAW APPLYING TO EVERYONE, I MUST SAY THAT IN TERMS OF BEING VERY FORCEFUL IN SAYING THAT HEALTH CARE PROFESSIONALS HAD A DUTY TO REPORT CHILD ABUSE THAT WAS OCCURRING PREBIRTH, I ROUTINELY LET DOCTORS KNOW IT WAS THE OFFICE'S POSITION THAT THAT WOULD BE REQUIRED.

AND I KNOW I ADDRESSED ONE MEETING OF OB/GYN DOCTORS HERE IN CHARLESTON AND THAT WAS OUR POSITION, IT WAS GOING TO BE ENFORCED FROM OUR PERSPECTIVE.

Q. WAS THAT A STATEWIDE MEETING THAT WAS HELD IN CHARLESTON?

A. IT WAS.

Q. AND WHAT DID YOU TELL THE OBSTETRICIANS AT THAT MEETING?

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**[CONDON 17]**

LITERAL READING THAT YOU MAKE OF THE RULE MAY SEEM TO MAKE IT HEARSAY, BUT HE IS THE DECLARANT. HE IS TESTIFYING AND HE IS MAKING THAT STATEMENT AGAIN. AND THAT TAKES IT OUTSIDE OF THE HEARSAY RULE BECAUSE IT GIVES YOU ALL OF THE PROTECTION THAT YOU NEED, TO WIT, CROSS-EXAMINATION OF HIM AS TO ITS TRUTH.

NOW, WHETHER IT'S ADMISSIBLE FOR -- INADMISSIBLE FOR SOME OTHER REASON I DON'T KNOW UNTIL I HEAR IT, BUT IT'S NOT HEARSAY. YOU MAY PROCEED.

Q. (BY MR, HOOD, CONTINUING) ALL RIGHT.

A. TO GET BACK TO THE POINT. I WAS THE CIRCUIT SOLICITOR, DISTRICT ATTORNEY IN CHARLESTON AND BERKELEY COUNTIES, WHICH HAD THE MAJORITY OF THE POPULATION IN THIS AREA, BUT NOT

CERTAINLY ALL OF IT. BUT IN TERMS OF MY JURISDICTIONAL RESPONSIBILITY WE MADE IT VERY CLEAR THAT IT WAS OUR VIEW OF THE LAW THAT THERE WAS A DUTY TO REPORT ACROSS THE BOARD EVERYONE WHO CAME ACROSS COCAINE BABIES DURING THEIR PRACTICES.

UNIQUELY THE MEDICAL UNIVERSITY ASKED US TO ENTER INTO A PARTNERSHIP WITH THEM TO HELP SOLVE THE PROBLEM AT THEIR NEONATOLOGY LEVEL. AND WE REALLY FELT LIKE THAT THAT WAS A VERY GOOD FOCAL POINT BECAUSE IF THERE WERE A CRACK BABY IN THIS PART OF THE STATE, IT WOULD EVENTUALLY HAVE TO GO TO THE MEDICAL UNIVERSITY OF SOUTH CAROLINA.

Q. AND, SIR, DID YOU BECOME AWARE OF TWO LOCAL PHYSICIANS THAT PRACTICED OBSTETRIC MEDICINE THAT IMPLEMENTED A SIMILAR

**[CONDON 18]**

POLICY IN THEIR OWN PRACTICE?

MR. WHERRY: OBJECTION, LEADING.

THE COURT: I THINK THE QUESTION WAS LEADING.

Q. (BY MR. HOOD, CONTINUING) FOLLOWING THAT SPEECH TO THE STATEWIDE GROUP OF OB DOCTORS, DID YOU LEARN WHAT LOCAL DOCTORS DID IN REACTION TO YOUR TALK?

A. WELL, IN THE COURSE OF THE POLICY ONGOING AT MUSC, THIS WENT ON FOR A NUMBER OF MONTHS, EVEN YEARS, OTHER DOCTORS IN THE AREA, PRIMARILY OB/GYNS WOULD CONTACT US WANTING TO IN EFFECT DEVELOP THE PROTOCOL THAT WE DEVELOPED AT MUSC.

SO THERE WERE OTHER DOCTORS IN THE PRIVATE PRACTICE SECTOR THAT CAME INTO THE PROGRAM, BUT WE WEREN'T -- IN OTHER WORDS, WE WERE FOCUSED IN ON SOLVING A PROBLEM THAT WE WERE TOLD ABOUT AT THE MUSC. WHEN WE LOOKED INTO THE PROBLEM IT SEEMED A VERY LOGICAL POINT TO STAY FOCUSED THERE BECAUSE THAT IS WHERE THE CRISES WAS DEVELOPED IN TERMS OF HELPING CHILDREN, THE DAMAGE OF WHICH WOULD BE TOTALLY PREVENTABLE.

Q. IS IT WITHIN THE POWER OF THE SOLICITOR'S OFFICE THAT YOU HELPED TO INVESTIGATE THE COMMITTING OF A CRIME?

A. IN THE STATE SYSTEM THE TYPICAL CRIMINAL CASE THAT YOU COME ACROSS IS SOMEONE BEING ARRESTED WITH AN ARREST WARRANT, AND THAT'S IN THE SYSTEM. BUT THE OFFICE OF CIRCUIT SOLICITOR HAS THE INHERENT POWER, EITHER THROUGH THE GRAND JURY OR THROUGH ITS INVESTIGATIVE POWER, TO INVESTIGATE ANY CRIMINAL CASE THAT IT DESIRES.

**[CONDON 19]**

SO, IN TERMS OF WHILE IT WAS UNIQUELY REQUESTED BY DOCTORS TO HELP OUT WITH LAW ENFORCEMENT PROBLEM, IT WAS NOT UNIQUE IN TERMS OF THE OPERATIONS OF THE OFFICE THAT WE OFTEN OR SOMETIMES DID GET INVOLVED IN CASES THAT DIDN'T HAVE THE FORMAL ARREST AT THE TIME, BUT WERE CRIMES THAT EITHER LOCAL LAW ENFORCEMENT OR CITIZENS WANTED US TO LOOK INTO.

Q. SO THE JURY WON'T THINK THIS WAS ALL YOU WERE DOING AS SOLICITOR, APPROXIMATELY HOW MANY CASES WOULD BE HANDLED THROUGH YOUR OFFICE IN YOUR EIGHT OR NINE YEARS AS SOLICITOR?

A. PART OF WHAT WAS GOING ON HERE AT THE TIME IN TERMS OF THE SOLICITOR'S OFFICE BACK IN 1988, 1989, WITH THE THOUSANDS AND THOUSANDS OF ARREST WARRANTS IN OTHER CRIMINAL MATTERS THAT WE BY LAW DEALT WITH, I KNOW I WAS PERSONALLY ACTIVE IN PROSECUTING CAPITAL CASES, WE WEREN'T LOOKING FOR ADDITIONAL WORK. BUT WHEN YOU LOOKED INTO THE SITUATION AT MUSC, AND LOOK INTO THE DAMAGE THAT WAS BEING DONE, AGAIN TOTALLY PREVENTABLE TO INNOCENT CITIZENS HERE IN CHARLESTON, I KNOW I FELT THAT IN TERMS OF OUR EFFORTS HERE THAT WHATEVER EFFORTS

THAT WE COULD CONTRIBUTE TO HELP SOLVE THE PROBLEM WE WERE GLAD TO DO IT. BUT IN TERMS OF THE OVERALL OPERATIONS OF THE OFFICE, IT WAS NOT THE MAJOR FOCAL POINT OR THE FOCAL POINT OF THE OFFICE, WE HAD GENERAL CRIMINAL PROSECUTION, GENERAL PROSECUTION THROUGHOUT BOTH COUNTIES.

Q. AS TO THE NUTS AND BOLTS OF THE POLICY, AFTER YOU GOT TO

**[CONDON 20]**

THE POINT WHERE A SOLICITOR LETTER WAS GIVEN TO THE PATIENT, DID YOUR OFFICE THEN START TRACKING THESE PATIENTS?

A. AS THE POLICY DEVELOPED, AS I RECALL, THE OFFICIALS AT MUSC THOUGHT IT WOULD BE VERY HELPFUL TO HAVE SOMETHING WRITTEN BY THE SOLICITOR'S OFFICE TO GIVE TO THE PEOPLE THAT WERE SUSPECTED OF ABUSING COCAINE. SO THEY HELPED DRAFT SOME LETTERS FOR ME TO SIGN TO GIVE TO THE PATIENTS TO LET THEM KNOW THE SEVERITY OF WHAT WAS GOING ON, BUT ALSO LET THEM KNOW THAT WE WERE GOING TO WORK WITH THEM IN TERMS OF AMNESTY.

SO AS THE POLICY DEVELOPED AND AS THINGS WENT ON, WE FELT LIKE IT WAS WORKING, WE WERE MAKING A CONTRIBUTION. I KNOW I INITIALLY ASKED A COUPLE OF ASSISTANT SOLICITORS AND

ONE OF THEIR INVESTIGATORS TO BE INVOLVED WITH HANDLING OR WORKING WITH MUSC ON THE PROTOCOL. BUT -

Q. WAS - I'M SORRY, GO AHEAD.

A. AS THE NUMBERS DEVELOP, WE WERE GETTING INTO THE HUNDREDS OF PEOPLE THAT WE WEREN'T PROSECUTING PER SE. WE WANTED TO BE SURE THAT THE REQUIREMENTS OF THE PROGRAM WERE BEING MET. I KNOW I ASKED A PART-TIME SOCIAL WORKER TO COME INTO THE OFFICE, GARDEN BLINCOW, TO HELP OUT IN TERMS OF KEEPING UP WITH THE CASES THEMSELVES. IT DEVELOPED WE THOUGHT VERY WELL. OTHERS DIDN'T THINK IT WAS GOING SO WELL WITH OTHER THINGS GOING ON WITH THE OUTSIDE WORLD, AND THAT'S HOW IT DEVELOPED THAT WE WERE PROSECUTING.

Q. WAS THIS TRACKING BY YOUR OFFICE, AFTER THE SOLICITOR

**[CONDON 21]**

LETTER GIVEN TO THE PATIENT, DONE IN THE HOPE OF ARRESTING THIS PATIENT?

MR. WHERRY: OBJECTION, LEADING.

THE COURT: OBJECTION SUSTAINED. PLEASE DISREGARD THE QUESTION, LADIES AND GENTLEMEN.

Q. (BY MR. HOOD, CONTINUING) WHAT WAS THE PURPOSE OF TRACKING THESE PATIENTS?

A. THE NUMBERS OF PEOPLE INVOLVED IN TERMS OF GIVING THEM AMNESTY, AS I SAID WE HAD A PUBLIC SERVICE ANNOUNCEMENT, OR ANYONE COULD CALL UP AND GET FREE DRUG HELP IF THEY NEEDED IT OR WANTED IT. SO THE NUMBERS WERE RELATIVELY LARGE. BUT WE WERE VERY PLEASED AND WANTED TO KEEP A TRACK OF THOSE THAT WERE SUCCESSFULLY COMPLETING DRUG TREATMENT, THAT WERE STAYING OFF DRUGS, THAT WERE HAVING HEALTHY BABIES. SO WE WANTED TO GET INVOLVED IN SAYING HOW IT WAS GOING AND MAKE SURE THAT WE SHOULD STAY INVOLVED, AND WE ASKED MS. BLINCOW TO HELP OUT WITH THAT WHOLE ASPECT.

THE IDEA THAT WE WERE INVOLVED IN A PROSECUTION PROGRAM IS ALMOST LAUGHABLE BECAUSE THIS WAS A SOFT AREA WE WERE IN, WE'RE HERE TO GIVE THEM AMNESTY. THE PATIENT OR THE WOULD-BE DEFENDANT WOULD HAVE TO BREAK INTO JAIL TO GET PROSECUTED. THAT'S ABOUT WHAT YOU HAD TO DO. YOU HAD TO NOT ONLY REFUSE AMNESTY, YOU WOULD HAVE TO CONTINUE TO TAKE THE DRUGS, YOU WOULD HAVE TO NOT GO TO FREE DRUG TREATMENT. AND EVEN IF YOU DID THAT, I KNOW THERE WERE A COUPLE OF WOMEN THAT

WENT THAT ROUTE, EVEN IF YOU DID THAT, WE REMAINED VERY FLEXIBLE, THAT IF THE PUBLIC DEFENDER ASKED US TO RECONSIDER DRUG TREATMENT, WE WOULD.

SO YOU WOULD HAVE TO SCOFF AT THE NOTION OF BEING RESPONSIBLE FOR YOUR ACTIONS. AND EVEN THEN WHEN THE TWO, I BELIEVE IT WAS, TWO LADIES THAT WENT TO COURT, WE WERE NOT OPPOSED TO PUTTING THEM ON PROBATION. THE IDEA WAS NOT TO PROSECUTE PEOPLE AND PUT THEM IN JAIL, THE IDEA WAS TO USE LEGAL INTERVENTION THAT WAS WORKING TO CHANGE HUMAN BEHAVIOR TO PROTECT CHILDREN, TO PROTECT BABIES.

Q. MR. CONDON, YOU MENTIONED THE PUBLIC SERVICE ANNOUNCEMENT. WOULD YOU EXPLAIN WHAT THAT WAS FOR THE JURY, PLEASE.

A. WE THOUGHT IT WOULD BE A GOOD IDEA TO JUST LET PEOPLE KNOW FROM THE TELEVISION, SEEMS TO BE THE WAY A LOT OF PEOPLE GET THEIR INFORMATION. SO THE IDEA WAS THAT WE WOULD DEVELOP A PUBLIC SERVICE ANNOUNCEMENT TO ANNOUNCE TO THE GENERAL PUBLIC THAT IF THERE WERE A DRUG PROBLEM, A COCAINE PROBLEM IN THE HOME, THAT RATHER THAN WAIT UNTIL IT GOT TO THE END OF THE LINE WITH THE GRANDBABY, WE WANTED TO GET THEM INVOLVED AS

EARLY AS POSSIBLE TO PREVENT DAMAGE TO CHILDREN. SO WE FILMED A PUBLIC SERVICE ANNOUNCEMENT THAT WAS CARRIED WIDELY IN THIS AREA. AND IT WAS SHOWN MANY TIMES WITH THE NUMBER TO CALL IF YOU WANTED FREE DRUG TREATMENT. AND THAT WAS PART OF THE PHILOSOPHY OF THE PROGRAM. THE PROGRAM WAS NOT TO ARREST

**[CONDON 23]**

PEOPLE AND PUT THEM IN JAIL, THE IDEA BEHIND THE PROGRAM WAS TO HELP PEOPLE STOP HURTING INNOCENT BABIES THROUGH THE USE OF ILLEGAL DRUGS.

Q. WAS THERE ANY DEVIATION FROM THE NORMS AND STANDARDS OF THE SOLICITOR'S OFFICE AND THE POLICIES AND PROCEDURES THERE IN THIS POLICY, THE INTERAGENCY POLICY?

A. NO. THE PROCEDURES THAT WE USED WERE USED ROUTINELY IN OTHER AREAS. IN FACT, AS THE PROGRAM DEVELOPED, THE PROGRAM CALLED PRETRIAL INTERVENTION THAT INITIALLY USED TO BE OPTIONAL BY THE SOLICITOR, I HAD SUCH A PROGRAM. WE CALLED IT THE DEFERRED PROSECUTION FOR STREET CRIME. THE GENERAL ASSEMBLY PASSED THE LAW I BELIEVE ABOUT '85 OR '86 THAT PUT IT IN THE LAWS OR CODIFIED THAT ALLOWED THE CIRCUIT SOLICITOR TO DEVELOP A PROGRAM. IN FACT IT REQUIRED IT FOR NONVIOLENT

FIRST TIME OFFENDERS THAT WANTED TO GET INTO A PROGRAM THAT WAS TREATMENT BASED WITH THE IDEA THAT THERE WOULDN'T BE A PERMANENT RECORD OF THE ARREST.

AS THIS PROGRAM DEVELOPED WE THOUGHT IT WOULD BE A GOOD IDEA TO HAVE A PRETRIAL INTERVENTION PROGRAM INVOLVED. WE WAIVED THE FEES, THERE WAS A FIFTY DOLLAR APPLICATION AND, I BELIEVE, $250 ONGOING FEE THAT WAS WAIVED TO PUT EVERYBODY IN THIS PROGRAM SO THAT WE COULD HELP THEM. AND WE HAVE USED THIS OR I DID USE IT AS THE CIRCUIT SOLICITOR FOR DRUG CASES, GENERAL DRUG CASES, SIMPLE POSSESSION CASES, SMALL PROPERTY OFFENSES. AND THE IDEA BEING THAT THE CARROT AND STICK, THERE

**[CONDON 24]**

WOULD BE A POTENTIAL PENALTY OVER SOMEONE'S HEAD THAT COULD BE IMPOSED IF THEY DIDN'T CHANGE THEIR BEHAVIOR. IF THEY DID CHANGE THE BEHAVIOR THERE WOULD BE NO PENALTY, THERE WOULD BE NO RECORD, THERE WOULD BE NO ARREST.

AND IT'S A SYSTEM THAT HAS BEEN USED AND IS USED TO THIS DAY FOR OTHER CASES TO TRY TO STOP THE COCAINE BABY CRISES.

Q. MR. CONDON, I HAVE THE PUBLIC SERVICE ANNOUNCEMENT THAT I

HAVE SHOWN TO COUNSEL. I WOULD LIKE TO NOW SHOW TO THE JURY.
DEFENDANT'S EXHIBIT 148.
MR. WHERRY: MAY I BE HEARD
THE COURT: YES, SIR.
MR. WHERRY: I DON'T THINK IT'S RELEVANT WHAT THE TELEVISION PROGRAM SHOWS. THIS CASE IS NOT ABOUT TELEVISION PROGRAMS, THIS CASE IT NOT ABOUT COMMUNICATION OF THE POLICY, THE CASE IS ABOUT THE CONSTITUTIONALITY OF THE POLICY. THIS TAPE HAS NOTHING TO DO WITH THE CONSTITUTIONALITY OF THE POLICY, IT'S MERELY AN ADVERTISING FOR GENERAL CONDON AND FOR THE POLICY. AND WHERE THE POLICY WAS ADVERTISED OR WHETHER IT'S A GOOD POLICY OR NOT HAS NOTHING TO DO WITH THE LEGALITY OF THE POLICY.
THE COURT: I'M NOT SURE THAT THE TAPE HAS BEEN PROPERLY AUTHENTICATED. I DON'T KNOW IF YOU OBJECT ON THAT GROUND.
MR. WHERRY: NO, SIR, I DON'T DO THAT. IT IS THE

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**[CONDON 27]**

THE COURT: YES.
MR. WHERRY: THIS WASN'T MADE OR SHOWN UNTIL MID MARCH OF 1990. SO I DON'T THINK IT CAN BE CONSIDERED FOR THE

PURPOSE OF WHAT THEY CONSIDERED IN FORMULATING THE POLICY THAT WAS PASSED AND IN PLACE AT THE END OF THE YEAR BEFORE.

THE COURT: WELL, I ASKED YOU ABOUT THE DATES EARLIER, AND YOU VERIFIED THAT THE DATES WERE, THERE WAS NO OBJECTION TO THE DATES, THAT'S THE REASON I ASKED YOU.

MR. WHERRY: I --

THE COURT: I WAS GOING TO REQUIRE MR. HOOD TO GO FURTHER AND ESTABLISH THE TIME FRAME IN WHICH THIS TAPE WAS SHOWN.

MR. WHERRY: MY UNDERSTANDING -

THE COURT: YOU, IN ANSWER TO MY QUESTION, SAID THAT WAS NOT A PROBLEM AND SO I DIDN'T PURSUE IT.

MR. WHERRY: I'M SORRY. I MISUNDERSTOOD YOUR QUESTION. MY ANSWER WAS, THAT IT WAS SHOWN IN A TIME FRAME RELEVANT TO THE POLICY BECAUSE IT WAS DURING THE POLICY.

THE COURT: WHEN WAS IT SHOWN, MR. HOOD, DO YOU KNOW? WILL THE TAPE ITSELF SHOW?

MR HOOD: NO, SIR. MR. CONDON MAY KNOW.

THE WITNESS: ABOUT MARCH.

MR. WHERRY: MARCH OF 1990. LIKE I SAID.

THE WITNESS: FOUR OR FIVE MONTHS AFTERWARD.

THE COURT: I'LL PERMIT IT. THE TESTIMONY IS TO THE

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**[CONDON 29]**

SHOW THAT THE TAPE WAS MADE AND THAT IT WAS SHOWN AND CAN BE CONSIDERED BY YOU ONLY FOR THAT FACT.

Q. (BY MR. HOOD, CONTINUING) YOU MENTIONED PTI. EXPLAIN THAT TO THE JURY AND HOW IT WAS HANDLED UNDER THE POLICY?

A. WELL, THERE IS A GENERAL PROGRAM THROUGHOUT THE ENTIRE STATE OF SOUTH CAROLINA CALLED PRETRIAL INTERVENTION PROGRAM. AND IT'S DESIGNED FOR FIRST TIME, NONVIOLENT OFFENDERS. AND THE IDEA BEING BASICALLY AMNESTY-BASED AGAIN. IF YOU'RE ARRESTED FOR A FIRST-TIME NON-VIOLENT OFFENSE, IF YOU WENT TO THE PROGRAM, WHICH PRIMARILY IS ABOUT SIX MONTHS TO ONE YEAR TIME FRAME, AND DIDN'T VIOLATE THE LAW FURTHER, AND EITHER GOT A JOB OR PAID RESTITUTION OR WENT TO SCHOOL, YOU WOULD SUCCESSFULLY COMPLETE IT AND YOUR RECORD WOULD BE TOTALLY EXPUNGED.

AS THE NUMBERS INCREASED IN THIS PROGRAM WITH THE CRACK BABIES, I FELT THAT IT WOULD BE A GOOD IDEA TO USE THE ADVANTAGES OF THAT PROGRAM IN TERMS OF KEEPING EVERYONE IN THE

SAME SYSTEM AND EVERYONE BEING FED OUT OF THE SAME SPOON AND MAKING SURE THEY WERE ALL DRUG FREE AND GOING TO DRUG TREATMENT BECAUSE THE NUMBERS CAME UP THERE. AND SO WHAT WE DID AS IT DEVELOPED, WE WAIVED THE FEES, ABOUT THREE HUNDRED DOLLARS IN FEES FOR ALL OF THE PEOPLE IN THE AMNESTY-BASED CRACK COCAINE PROGRAM AND GOT THEM INVOLVED IN THAT PROGRAM TO TAKE ADVANTAGES OF THE ADMINISTRATIVE ASPECTS OF THAT PROGRAM

**[CONDON 30]**

PRIMARILY.

Q. NOW OTHER PERSONS CHARGED WITH CRIMES GOING THROUGH PRETRIAL INTERVENTION, DID THEY HAVE TO PAY A FEE?

A. YES. YES. THE GENERAL - IT'S A SELF-SUFFICIENT PROGRAM, THE OFFENDERS WERE EXPECTED TO SUPPORT IT FINANCIALLY. BUT WE JUST WAIVED THE FEES ACROSS THE BOARD FOR THOSE AT MUSC, JUST IN TERMS OF REALLY BENDING OVER BACKWARD TO MAKE SURE THERE WASN'T AN ASPECT TO BE CONCERNED ABOUT THE FINANCIAL ASPECTS OF THEM HAVING TO PAY.

SO WHILE OTHERS HAD TO PROVE INDIGENCY AND INABILITY TO PAY, FOR THE CRACK COCAINE MOMS, PEOPLE IN THE PROGRAM, WE

ACROSS THE BOARD WAIVED THE FEES.
Q. MR. CONDON, WHY WAS COCAINE SELECTED AS OPPOSED TO ALCOHOL OR SMOKING OR SOMETHING ELSE?
A. GOING BACK, AND I GUESS IT'S A REFLECTION OF HOW SOCIETY IS, GOING BACK TO 1988, 1989, IT WAS JUST A SHOCK THAT A MOTHER WOULD TAKE AN ILLEGAL DRUG, CRACK COCAINE, THE POSSESSION OF WHICH WAS A FELONY. AND ON TOP OF THAT THE MEDICAL EVIDENCE THAT WAS REPORTED TO US WOULD BE THAT UNLIKE ALCOHOL, WHICH WOULD BE LEGAL OF COURSE TO POSSESS IT, OR TOBACCO, WHICH WOULD BE LEGAL TO POSSESS, THAT IF YOU TOOK ONE HIT OF CRACK, ONE HIT, THAT POTENTIALLY IT COULD KILL A CHILD IN UTERO. IN THE WOMB.
SO, WHEN WE DEVELOPED THE PROTOCOL, AND OF COURSE I WAS RELYING, AND THERE WAS NO EXPERT, NO DOCTOR HERE, IN TERMS

**[CONDON 31]**

OF THE DAMAGE, BUT IN DEVELOPING THE PROTOCOL WITH THE OFFICIALS AT MUSC, IT WAS FELT FROM THEIR REVIEW OF THE LITERATURE, THAT THIS WAS A CRISES IN PROGRESS, THAT THE BASIC PROBLEM THERE REVOLVED AROUND CRACK COCAINE OR COCAINE IN TERMS OF THE TREMENDOUS RISE IN DAMAGES THAT THEY WERE SEEING

TO NEWBORNS. SO THAT WAS THE FOCAL POINT OF THE PROGRAM WAS CRACK COCAINE.

Q. DID YOU GET INVOLVED IN TRYING TO INCREASE TREATMENT AND FUNDING FOR TREATMENT IN CHARLESTON COUNTY OR IN BERKELEY COUNTY?

A. AS THE PROGRAM DEVELOPED WE FELT THAT THERE WAS ADEQUATE TREATMENT FOR THOSE IN THE PROGRAM, THAT IT WOULD BE GOOD TO AUGMENT IT OR SUPPLEMENT IT PERHAPS WITH INPATIENT TREATMENT. SO I CONTACTED, I KNOW WE HAD THE PUBLIC DEFENDER INVOLVED AT THE TIME, AND I HAPPENED TO MEET, AT ONE OF THE CONFERENCES I WENT TO, AN OFFICIAL WITH THE FEDERAL GOVERNMENT WITH HHS, AND WE TRIED TO SUBMIT A GRANT APPLICATION TO OBTAIN THE FEDERAL FUNDING.

I KNOW WE WERE THINKING ABOUT USING THE PSYCHIATRY DEPARTMENT AT MUSC TO GET A LARGE FEDERAL GRANT, VERY EXPENSIVE, COST MILLIONS OF DOLLARS, BUT TO GET A FEDERAL GRANT TO ACTUALLY BUILD A WING OF THE HOSPITAL FOR INPATIENT TREATMENT FOR THOSE THAT WOULD BENEFIT FROM IT.

SO WE HAD SEVERAL MEETINGS. IT TOOK LOTS OF TIME. BUT AT THE END OF THE DAY THE FUNDS WERE NOT AVAILABLE. BUT

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**[CONDON 39]**

IT IS ESTABLISHED AND IT IS DESIRABLE TO DISPOSE OF THAT ISSUE AT AN EARLY STAGE. AND THAT'S WHAT THE UNITED STATES SUPREME COURT HAS TOLD US. AND ALL COURTS FOLLOW THAT. BUT IT STILL IS A DEFENSE, EVEN THOUGH IT'S BETTER TO BE DISPOSED OF AS A MATTER OF LAW. SO, I DON'T THINK THAT DISPOSED OF THE ISSUE, BUT I THINK IN ADDITION TO WHAT I SAID AT THE SIDEBAR, I THINK IT'S ALSO ADMISSIBLE FOR OVERALL INTENT. AND NOT JUST ON THE ISSUE THAT I STATED.

MR. WHERRY: THANK YOU, SIR.

THE COURT: IT'S 11:30. GO AHEAD AND ASK THIS QUESTION AND LET'S GET AN ANSWER, SINCE WE'RE ON THAT, AND THEN WE'LL TAKE A BREAK.

MR. HOOD: THANK YOU, YOUR HONOR.

A. THE QUESTION BEING THE STATUTE ON CHILD ABUSE.

Q. YES, SIR. AND THE PHYSICIAN'S OBLIGATION UNDER THE STATUTE?

A. THE STATUTE, THEY WERE TOLD, IN MY VIEW, REQUIRES --

MR. WHERRY: I OBJECT. THE STATUTE, THEY WERE TOLD, IN MY VIEW. HE IS NOW GIVING HIS OPINION OF WHAT THAT STATUTE IS.

THE COURT: WELL, I HAVE TOLD THE JURY THAT THEY

CANNOT CONSIDER WHAT HIS INTERPRETATION OF THE STATUTE WAS FOR ITS TRUTH, ONLY THE FACT THAT IT WAS TOLD TO THESE PEOPLE.
AND SO I DON'T KNOW HOW I COULD BE MORE EXPLICIT AND I THINK THE JURY UNDERSTANDS IT.

**[CONDON 40]**

GO AHEAD.
A. THERE WOULD BE AN AFFIRMATIVE DUTY. THERE WOULD BE A LEGAL OBLIGATION UNDER A CRIMINAL PENALTY IF YOU DON'T DO IT, TO REPORT CHILD ABUSE TO EITHER THE DEPARTMENT OF SOCIAL SERVICES OR LAW ENFORCEMENT. THERE WOULD BE THAT DUTY TO DO THAT. THAT WOULD INCLUDE COCAINE USE, CRACK COCAINE USE THAT HARMED BABIES.
Q. AND DID YOU IMPART THAT VIEW TO SOME OF THE MEDICAL NAMED DEFENDANTS IN THIS CASE, SUCH AS DR. HORGER, DR. NEWMAN, DR. PITTARD?
A. ABSOLUTELY.
MR. WHERRY: OBJECTION, YOUR HONOR, LEADING.
THE COURT: IT IS LEADING. AND, LADIES AND GENTLEMEN, STRIKE THE QUESTION AND THE ANSWER.
MR. HOOD: I'LL RE-ASK IT.
THE COURT: OKAY.
Q. (BY MR. HOOD, CONTINUING) DID YOU IMPART THAT SAME VIEW

AS OUR SOLICITOR TO SOME OF THE NAMED DEFENDANTS IN THIS CASE?

MR. WHERRY: OBJECTION.

THE COURT: OBJECTION SUSTAINED.

Q. (BY MR. HOOD, CONTINUING) DID YOU IMPART IT TO ANY PHYSICIAN?

THE COURT: SUSTAINED.

MR. HOOD: TO ANYONE?

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**[CONDON 43]**

CROSS-EXAMINATION TO LET THE MEDICAL BOARD MEMBER DR. BING, WHO IS HERE FROM THE UPPER PART OF THE STATE, ANSWER FOUR OR FIVE QUESTIONS, AND HE HAS AGREED TO IT. BUT I HAVE GOT A FEW MORE QUESTIONS ON DIRECT. DO YOU WANT ME TO DO THE NON-JURY STUFF NOW OR AT THE END OF CROSS?

THE COURT: LET JUST WAIT UNTIL THE END.

MR. HOOD: YES, SIR.

THE COURT: BRING THEM IN, PLEASE.

(JURY ENTERS.)

Q. (BY MR. HOOD, CONTINUING) MR. CONDON, IN THE CONTEXT OF THIS POLICY, WAS THERE A REQUIREMENT TO OBTAIN A SEARCH WARRANT, SUBPOENA OR ARREST WARRANT BEFORE ARRESTING THESE WOMEN?

A. NO. THE CASES WOULD INVOLVE ADMISSIONS. THE DEFENDANTS

WOULD ADMIT TO ROUTINELY THE COCAINE USE, AND THE REQUIREMENT IS TO REPORT ANYWAY.

Q. IF YOUR OFFICE RECEIVED A REPORT FROM THE HOSPITAL OTHER THAN THE MEDICAL UNIVERSITY OR FROM A PRIVATE PHYSICIAN THAT A PREGNANT WOMEN WAS USING COCAINE, WHAT WOULD YOUR OFFICE HAVE DONE?

MR. WHERRY: OBJECTION, THAT'S HYPOTHETICAL. SPECULATIVE.

THE COURT: I WILL OVERRULE THE OBJECTION.

A. THE CASES WOULD BE TREATED THE SAME WAY. IN FACT, THERE WERE A NUMBER OF PRIVATE PHYSICIANS. I CAN RECALL A DOCTOR

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**[CONDON 48]**

A. NO. THE -- AS I WAS SAYING EARLIER, IN THE LOWER PART HERE OF SOUTH CAROLINA, IF YOU HAVE GOT A CHILD, I KNOW THIS FIRSTHAND FROM HAVING FRIENDS OF MINE HAVE TO GO THROUGH TRYING TO SAVE PREMATURE BABIES, IF YOU HAVE GOT A PREMATURE BABY IN THIS PART OF THE STATE, AND SOMEONE WHO HAS SERIOUS DAMAGE AND NEEDS HELP FROM A NEONATOLOGIST, IT GOES TO THE MEDICAL UNIVERSITY OF SOUTH CAROLINA.

SO IN TERMS OF THE THOUGHT OF HOW TO ADDRESS THE

PROBLEM THAT WAS HERE, THAT WAS A VERY LOGICAL PLACE TO BE.

Q. GENERAL, IT WAS PART OF THE INTERAGENCY POLICY, WASN'T IT, THAT BABIES BORN OUTSIDE OF MUSC, KNOWN AS OUTBORN BABIES THAT CAME INTO THE NEONATAL INTENSIVE CARE UNIT WERE NOT SUBJECT TO THE POLICY, ISN'T THAT SO?

A. NO. IT WOULD BE MY UNDERSTANDING THAT IF THERE WERE A NEWBORN TRANSFERRED TO MUSC THAT WAS DAMAGED FROM CRACK COCAINE, THAT THEY HAD A DISTINCT LEGAL OBLIGATION TO REPORT IT AND THAT THAT CHILD WOULD BE PART OF THE PROGRAM AND THE PROTOCOL.

Q. YOU KNOW SHIRLEY BROWN, DON'T YOU?

A. I DO.

Q: SHE WAS NOT MENTIONED DURING YOUR DIRECT TESTIMONY. IN FACT, GENERAL, YOU WORKED VERY CLOSELY WITH SHIRLEY BROWN ON THE DEVELOPMENT AND THE IMPLEMENTATION OF THIS POLICY, DIDN'T YOU?

A. I WORKED WITH LOTS OF OFFICIALS AT THE MEDICAL UNIVERSITY

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**[CONDON 50]**

HE CAN TESTIFY. AND THEN IF THERE IS A DISCREPANCY YOU CAN POINT THAT OUT TO THE JURY, BUT TO PHRASE THE QUESTION AS YOU

DID, IT'S INAPPROPRIATE AND I SUSTAIN THE OBJECTION. SO REPHRASE IT.

Q. (BY MR. WHERRY, CONTINUING) GENERAL, YOU DIDN'T MEET WITH DOCTOR EDWARDS AT ANYTIME PRIOR TO THE ADOPTION OF THE POLICY CONCERNING THE POLICY, DID YOU?

A. WELL, IF YOUR QUESTION RELATES TO THE TIME PERIOD BEFORE THE ADOPTION OF THE POLICY, WHICH WOULD BE A TIME FRAME OF --

Q. THAT'S WHAT I ASKED.

A. I'M SORRY, I MISUNDERSTOOD. WHICH WOULD BE A TIME FRAME OF THREE OR FOUR WEEKS, I CAN'T RECALL A SPECIFIC FORMAL MEETING WITH HIM. BUT YOU'RE TALKING OF A TIME PERIOD FIVE, SIX, SEVEN YEARS AGO. I CAN AND DO KNOW THAT I WOULD EITHER BUMP INTO HIM AT INFORMAL OCCASIONS OR SEE HIM AND WE WOULD DISCUSS THE -- REALLY, FRANKLY, I WAS VERY PROUD THAT THEY WERE WILLING TO GET INVOLVED IN TRYING TO DO SOMETHING TO HELP SOLVE A PROBLEM THAT WAS AFFECTING THE ENTIRE COUNTRY.

Q. GENERAL, YOUR JURISDICTION, YOUR JURISDICTION RAN TO BERKELEY COUNTY ALSO, DIDN'T IT?

A. I WAS THE SOUTH CAROLINA -- SOUTH CAROLINA IS DIVIDED INTO 16 JUDICIAL CIRCUITS.

THE COURT: MR. CONDON, JUST ANSWER HIS QUESTION.

YOUR JURISDICTION EXTENDED TO BERKELEY COUNTY, YES OR NO?

A. WELL, IT INCLUDED BERKELEY COUNTY, YES.

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**[CONDON 52]**

ABOUT IN TERMS OF HAVING KNOWLEDGE OF IT, I CAN'T RECALL. I'M SURE THAT THEY GAVE IT TO ME AND I'M SURE IT WAS ON MY DESK WITH LOTS OF OTHER THINGS, BUT IN TERMS OF INTIMATE KNOWLEDGE OF THE REPORT THERE, I WOULD NOT HAVE IT.

Q. WELL, AS WITH ALL PEOPLE IN POSITIONS OF AUTHORITY AND POWER, WOULD YOU AGREE WITH ME, SIR, THAT THE BUCK STOPPED WITH YOU THAT YOU WERE RESPONSIBLE FOR WHAT THE PEOPLE UNDER YOUR SUPERVISION DID?

A. OH, YES. I WAS THE CIRCUIT SOLICITOR OF THE NINTH CIRCUIT. SURE.

Q. LET ME HAND YOU, SIR, WHAT HAS BEEN MARKED PLAINTIFF'S EXHIBIT 176 C. AND I'M GOING TO SPECIFICALLY REFER YOU TO -

MR. WHERRY: BEAR WITH ME FOR A MOMENT, YOUR HONOR, I HAD IT JUST A SECOND AGO.

MR. HOOD: I'M NOT FAMILIAR WITH WHAT C IS. I THINK IT MIGHT BE A.

Q. (BY MR. WHERRY, CONTINUING) THE PAGE IS BATE STAMPED THE LAST FOUR DIGITS 2643.

FIRST OF ALL YOU RECOGNIZE THAT DOCUMENT THAT WAS IN

EVIDENCE AS THE TRACKING LIST KEPT BY REPRESENTATIVES OF YOUR OFFICE AT OUR DIRECTION WHILE YOU WERE THE SOLICITOR FOR THIS DISTRICT; ISN'T THAT RIGHT?

A. I CAN'T SAY THAT.

Q. SO YOU DON'T RECOGNIZE THE DOCUMENT?

A. WELL, GENERALLY -- I MEAN, GENERALLY LOOKING AT THE

**[CONDON 53]**

DOCUMENT IT APPEARS TO BE WHAT YOU SAY IT IS. BUT I CAN'T -- I MEAN --

Q. WELL, WOULD YOU AGREE WITH ME, SIR, THAT THE DOCUMENT SAYS, AND IT'S IN EVIDENCE SO IT IS WHAT IT IS WHAT IT IS, WOULD YOU AGREE WITH ME, SIR, THAT WITH RESPECT TO THAT DOCUMENT ON PAGE 2643, SECOND ENTRY DOWN FOR, PATIENT NUMBER 78, IT SAYS, HAMPTON COUNTY 11/91, PARENTHESIS, DON'T COUNT.

A. IT SAYS THAT.

Q. AND FOR PATIENT NUMBER 206, IT SAYS DORCHESTER COUNTY, DON'T COUNT?

A. YES. IT SAYS THAT.

Q. AND AT THE BOTTOM OF PATIENT NUMBER 110 IT SAYS BERKELEY COUNTY, DON'T COUNT?

A. IT SAYS THAT.

Q. AND FOR PATIENT 34, IT SAYS BERKELEY COUNTY, DON'T COUNT?

A. NO, 34 IT SAYS APRIL 1990, BERKELEY COUNTY WARRANT

ISSUED.
Q. AND WAS THAT, SIR, A PROSECUTION DONE IN BERKELEY COUNTY?
A. I DON'T KNOW. I DON'T -- I DON'T HAVE ANY KNOWLEDGE OF THE DETAILS OF THIS DOCUMENT.
Q. WHEN YOU WENT TO THE NEONATAL INTENSIVE CARE UNIT, SIR, AT MUSC, YOU SAID THAT YOU SAW THESE BABIES. SIR, NO ONE THERE TOLD YOU THAT THESE BABIES THAT YOU SAW WERE THE RESULT OF CRACK COCAINE, DID THEY?
A. NO, I WAS TOLD THAT -- AS I RECALL WE WENT AND LOOKED AT

**[CONDON 54]**

- THERE WAS A WALL OF THEM AND THEY WERE RUNNING OUT OF THE VENTILATORS. AND I WAS TOLD THEM SOME OF THEM WERE NOT OBVIOUSLY COCAINE BABIES. AND I WAS TOLD THIS ONE WOULD BE AND THIS ONE WOULDN'T BE.
Q. WHO TOLD YOU THAT? SHIRLEY BROWN?
A. NO, I RECALL IT BEING WHOEVER WAS IN CHARGE OF THE UNIT AT THAT TIME WHEN WE WENT IN TO LOOK. BUT IT'S BEEN SIX OR SEVEN YEARS AGO, BUT I DO -- I DO REMEMBER THE BABIES. YOU DON'T FORGET THAT.
Q. SIR, ON YOUR DIRECT EXAMINATION, YOU TALKED ABOUT THE AVAILABILITY OF USING THE PROBATE COURT. THERE WAS A

PROCEDURE IN SOUTH CAROLINA, NOW, GENERAL, NOT WHETHER THE JUDGE WANTED TO USE IT, BUT THERE WAS A PROCEDURE FOR INVOLUNTARY CIVIL COMMITMENT FOR PEOPLE WHO WERE A DANGER TO THEMSELVES OR OTHERS IN SOUTH CAROLINA AT THE TIME OF THIS POLICY WAS FORMED, ISN'T THAT SO?

A. A PROCEDURE IN TERMS OF THE WRITTEN STATUTE?

Q. THE LAW.

A. WELL, IN TERMS OF THE WRITTEN STATUTE THERE WAS A STATUTE THAT COULD HAVE COVERED THIS.

Q. AND ALL THAT IT TOOK, GENERAL,TO ACCOMPLISH THAT WAS THE FILING OF A LAWSUIT IN THE PROBATE COURT TO ACCOMPLISH THAT INVOLUNTARY CIVIL COMMITMENT; ISN'T THAT SO?

A. NO. I MEAN -- I DON'T KNOW HOW ELSE TO ANSWER THIS. WE MET WITH JUDGE FIELDING, WHO WAS THE PROBATE JUDGE, AND HE WAS

**[CONDON 55]**

VERY STRONG ABOUT THESE CASES WOULD NOT BE HEARD IN THIS COURT BECAUSE HE DIDN'T HAVE FACILITIES TO COMMIT.

Q. WELL, BECAUSE HE DIDN'T HAVE FACILITIES TO COMMIT, YOU MEAN THERE WAS NO PLACE TO SEND THE WOMEN?

A. ALL I KNOW IS MY OFFICE CONTACTED HIM AND I WAS TOLD THAT

JUDGE FIELDING WOULD NOT HEAR THESE CASES.

Q. WELL, GENERAL, IT WAS YOU WHO CONTACTED JUDGE FIELDING, WASN'T IT? WASN'T THAT WHAT YOU SAID IN YOUR DEPOSITION?

A. I DON'T.KNOW WHAT I SAID IN DEPOSITION. I KNOW THAT IN TERMS OF EITHER I PERSONALLY OR MY OFFICE, IT WAS DONE. IN FACT I THINK WE HAD A COUPLE OF CONVERSATIONS TO SEE IF HE MIGHT CHANGE HIS MIND.

Q. GENERAL, YOU KNEW THAT THERE WERE AVAILABLE REMEDIES, DIDN'T YOU, WHEN A JUDGE REFUSED TO PERFORM THE JUDGE'S DUTIES?

A. WELL, IN TERMS OF BEING EFFECTIVE, WE HAD A CRISES HERE, SIR.

Q. SIR, MY QUESTION WAS SIMPLY NOT WHETHER YOU HAD A CRISES, BUT YOU KNEW THERE WERE PROCEDURES THAT WERE AVAILABLE WHEN A JUDGE REFUSED TO PERFORM THE JUDGE'S REQUIRED DUTIES?

A. NO. AGAIN IN LOOKING AT THE SITUATION HERE, THIS ISN'T HYPOTHETICAL, THESE ARE BABIES THAT ARE DYING. THE IDEA THAT WE WOULD SEEK SOME SORT OF JUDICIAL MANDATE TO FORCE JUDGE FIELDING TO DO SOMETHING, YOU WOULD CHASE THAT RABBIT A LONG WAY BEFORE YOU COULD GET SOME HELP FOR THESE BABIES. AND WE

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**[CONDON 62]**

Q. (BY MR. WHERRY, CONTINUING) GENERAL, THE POLICY AT SOME POINT IN TIME STOPPED BEING USED IN THE WAY THAT IT WAS CONCEIVED WHEN IT BEGAN, FAIR?

A. I HAVE BEEN TOLD THAT IT'S BEEN STOPPED, YES.

Q. AND AT THE PRESENT TIME IN FACT TO ACCOMPLISH THE SAME PURPOSES, THE PROBATE COURTS OF THIS DISTRICT ARE BEING USED TO INVOLUNTARILY COMMIT WOMEN FOR THE PROTECTION OF THEMSELVES AND OTHERS FOR SUBSTANCE ABUSE DURING PREGNANCY; ISN'T THAT SO?

A. I DON'T HAVE PERSONAL KNOWLEDGE OF THAT.

Q. AS THE ATTORNEY GENERAL OF THE STATE OF SOUTH CAROLINA, I TAKE IT, SIR, THAT YOU'RE THE CHIEF LAW ENFORCEMENT OFFICER OF THE STATE?

A. I AM.

Q. AND IN THAT REGARD, SIR, EACH OF THE SOLICITORS ARE RESPONSIBLE TO YOU?

A. THAT WOULD BE MY VIEW.

Q. AND SO, SIR, YOU ARE IN IN EFFECT THE SUPERIOR, AT LEAST IN THE LAW ENFORCEMENT COMMUNITY, OF SOLICITOR SCHWACKE?

A. YES.

Q. HAVE YOU NOT, SIR, KEPT UP-TO-DATE ON THIS POLICY?

A. YES. I MEAN, IN TERMS.

Q. AND -

MR. HOOD: LET HIM ANSWER THE QUESTION.
A. I HAVE - SINCE BEING ELECTED ATTORNEY GENERAL OF SOUTH

**[CONDON 63]**

CAROLINA, I HAVE ACTUALLY FORMED A STATEWIDE TASK FORCE TO LOOK AT THIS PROBLEM AND --
Q. AND, SIR, YOU HAVE --
MR. HOOD: ARE YOU THROUGH?
THE COURT: I THINK HE HAS ANSWERED THE QUESTION.
Q. (BY MR. WHERRY, CONTINUING) YOU HAVE TAKEN VARIOUS POSITIONS IN FAVOR OF THIS POLICY IN VARIOUS SPEECHES THAT YOU HAVE MADE, FAIR?
A. FAIR.
Q. AND SO, SIR, I TAKE IT THAT YOU ARE AT LEAST GENERALLY FAMILIAR WITH WHAT THE STATUS OF THE POLICY IS IN THE CHARLESTON AREA BECAUSE YOU'RE THE CHIEF LAW ENFORCEMENT OFFICER OF THIS STATE?
A. WELL, I HAVE BEEN INFORMED OF THINGS WITH -- YES. IN THIS AREA.
Q. AND SO YOU KNOW THAT WHAT IS BEING DONE NOW, RATHER THAN ARRESTING AND PROSECUTING WOMEN?
MR. HOOD: THE COURT PLEASE, HE IS NOW TESTIFYING.
THE COURT: HE IS ON CROSS-EXAMINATION.
MR. HOOD: I OBJECT. THERE IS NO FOUNDATION BEEN

LAID AND UNDER 403. I THINK IT'S IMPROPER.
Q. (BY MR. WHERRY, CONTINUING) SO, SIR, YOU'RE AWARE RATHER THAN ARRESTING AND PROSECUTING WOMEN FOR SUBSTANCE ABUSE DURING PREGNANCY, WHAT IS IN EFFECT HAPPENING, THEY'RE BEING BROUGHT BEFORE THE PROBATE COURT FOR INVOLUNTARY COMMITMENT

**[CONDON 64]**

WHEN THEY HAVE USED SUBSTANCES DURING PREGNANCY; ISN'T THAT FAIR?
A. WHAT I HAVE BEEN TOLD, I DO KNOW THIS IS A CHANGED ADMINISTRATION IN THE PROBATE COURT. MY BROTHER IS NOW THE PROBATE JUDGE.
Q. CONGRATULATIONS. BUT MY QUESTION IS --
MR. HOOD: HE IS IN THE MIDDLE OF ANSWERING HIS QUESTION.
MR. WHERRY: HE IS IN THE MIDDLE OF GIVING A SPEECH THAT ISN'T RESPONSIVE. I'M GOING BACK TO THE SAME QUESTION.
THE COURT: NO, YOU ASKED HIM ABOUT HIS KNOWLEDGE OF WHAT WAS GOING ON IN THE AREA. AND HE WAS EXPLAINING IN GENERAL TERMS WHAT HE KNEW. AND I THINK HE HAS A RIGHT TO DO THAT. I MEAN, HE IS RESPONDING TO YOUR QUESTION.
GO AHEAD.

A. MY BROTHER IS NOW THE PROBATE JUDGE. I KNOW HE IS MORE SYMPATHETIC TO TRY HELP SOLVE THE PROBLEM. I DO KNOW AT THIS TIME THAT I'M NOW CONDUCTING MEETINGS ON A STATEWIDE BASIS OF OFFICIALS THROUGHOUT THE STATE OF SOUTH CAROLINA IN TRYING TO COME UP WITH A COHERENT STATEWIDE POLICY TO ADDRESS THE SERIOUS PROBLEM ACROSS THE ENTIRE STATE OF SOUTH CAROLINA.

Q. AND ONE OF THE WAYS -- WELL, LET ME ASK YOU THIS, SIR. THE LAW, AS YOU UNDERSTAND IT, OF ACCESS TO PROBATE COURTS DIDN'T CHANGE, DID IT, BETWEEN WHEN YOU FORMULATED THIS POLICY AND NOW?

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**[CONDON 66]**

MR. WHERRY: HE CAN REDIRECT HIM ON THAT, I THINK.

MR. HOOD: THEREFORE, I ASK YOU TO TELL THE JURY TO STRIKE ALL OF THIS AS IRRELEVANT.

THE COURT: NO. HE HAS A RIGHT TO ASK HIM THESE QUESTIONS.

MR. HOOD: YES, SIR.

(SIDEBAR TERMINATED.)

Q. (BY MR. WHERRY, CONTINUING) GENERAL, YOU SAID A NUMBER OF TIMES DURING YOUR DIRECT THAT, I THINK YOUR WORDS WERE: THESE LITTLE BABIES WERE BEING DAMAGED BY THE USE OF DRUGS,

THAT WAS A FELONY, RIGHT?
A. THE USE OF CRACK COCAINE, POSSESSION OF IT IS A FELONY.
Q. THE SAME WAS TRUE OF HEROIN, ISN'T IT?
A. I DON'T SPECIFICALLY RECALL, BUT I WOULD IMAGINE IT TO BE A FELONY.
Q. METHAMPHETAMINES?
A. I DON'T KNOW SPECIFICALLY, BUT IT COULD BE.
Q. BARBITURATES?
A. AGAIN, I DON'T KNOW WHETHER IT'S A MISDEMEANOR OR FELONY FOR BARBITURATES.
Q. IT'S CRIMINAL, RIGHT, GENERAL?
A. YES.
Q. CRIMINAL?
A. WITHOUT A PRESCRIPTION.
Q. OPIATES?

**[CONDON 67]**

A. YES.
Q. HALLUCINOGENS?
A. YES.
Q. EVEN WITH PRESCRIPTIONS FOR THEM, RIGHT, BECAUSE YOU CAN'T GET PRESCRIPTIONS FOR THEM?
A. HALLUCINOGENS?
Q. YES.
A. THAT WOULD BE MY UNDERSTANDING.
Q. SO, GENERAL, THIS POLICY, HOWEVER -

JUST BY THE WAY, EACH OF THOSE THAT I MENTIONED, THE OPIATES, THE HEROIN, WHICH IS AN OPIATE, METHAMPHETAMINE,

BARBITURATES, EACH OF THOSE IS POTENTIALLY DAMAGING TO A FETUS; ISN'T THAT RIGHT?
A. THAT WOULD BE MY UNDERSTANDING.
Q. BUT, GENERAL, THIS POLICY DIDN'T FOCUS ON ANY OF THEM, DID IT?
A. WELL, IT WAS MY UNDERSTANDING THAT THEY SCREENED FOR A NUMBER OF DRUGS, BUT IT WOULD BE FAIR TO SAY THAT THE - THAT THE PRIMARY FOCUS FROM WHAT THEY WERE SAYING IN TERMS OF WHAT WAS ACTUALLY CAUSING DAMAGE TO CHILDREN WOULD BE CRACK COCAINE OR COCAINE.
Q. WELL, LET ME COMEBACK TO WHERE MY ORIGINAL QUESTION WAS IN A MOMENT. BUT THE PRIMARY FOCUS OF WHAT THEY WERE SAYING WAS COCAINE AND ALCOHOL, WASN'T IT, BECAUSE THAT'S WHAT THE POLICY SPECIFICALLY MENTIONED, FAIR?

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**[CONDON 69]**

ISN'T THAT SO?
A. I DON'T KNOW THAT.
Q. WELL, GENERAL, LET'S TALK ABOUT THE SELECTION OF MUSC AND THE SELECTION OF COCAINE, BECAUSE YOU WILL AGREE THAT YOU DID FOCUS ON COCAINE WHETHER IT WAS EXCLUSIVELY OR NOT?
A. THAT WOULD BE A FAIR STATEMENT.
Q. MUSC, GENERAL, YOU KNEW, WHEN YOU STARTED WORKING WITH

MUSC, THAT IN FACT 70 PERCENT OF THE POPULATION OF MUSC, THE PATIENT POPULATION WAS BLACK, 30 PERCENT NON-MINORITY, FAIR?

A. NO, I DID NOT KNOW THAT.

Q. WELL, YOU HAVE COME TO LEARN THAT HAVEN'T YOU, GENERAL?

A. IN FACT, I HEARD IT TODAY FOR THE FIRST TIME.

Q. GENERAL, YOU ALSO KNOW THAT THE GENERAL RACIAL MAKEUP OF THE CHARLESTON, SOUTH CAROLINA, AREA, THE JUDICIAL CIRCUIT THAT YOU WERE THE SOLICITOR OF WAS JUST ABOUT THE OPPOSITE, 30 PERCENT BLACK, 70 PERCENT WHITE?

A. I MEAN I WOULD KNOW THAT, YES. BUT I DID NOT KNOW THE NUMBERS AT MUSC.

Q. GENERAL, YOU KNOW THAT CRACK COCAINE USE IS MUCH MORE PREVALENT AMONG THE MINORITY POPULATION THAN THE MAJORITY? THAT IS, MORE BLACK PEOPLE USE IT THAN WHITE, YOU KNEW THAT, DIDN'T YOU, AS SOLICITOR?

A. NO, NOT AT THE TIME. THIS WAS VERY NEW. CRACK COCAINE, WHICH IS NOW I GUESS A COMMON WORD, BUT IN THE LATE '80S CRACK COCAINE WAS A NEW DRUG, A NEW EPIDEMIC, AND I DID NOT HAVE ANY

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**[CONDON 78]**

Q. GENERAL, THE ORIGINAL LETTERS THAT YOU SENT OUT, YOU NEED

TO LOOK AT THEM YOU CAN LOOK AT THEM, BUT THE ORIGINAL LETTERS THAT YOU SENT OUT ABOUT THIS POLICY INVITING PEOPLE TO MEETINGS, LETTERS TO CHIEF GREENBERG, ALL REFER TO YOUR INTENTION TO PROSECUTE, DIDN'T THEY? NONE REFERRED TO AMNESTY?

A. I'M FAMILIAR WITH THE LANGUAGE YOU'RE REFERRING TO.

Q. YEAH.

A. THE LANGUAGE WAS USED IN TERMS OF THE OFFICE BEING INVOLVED WITH THE DEVELOPMENT OF THE PROTOCOL AND USE OF THE PROSECUTION AUTHORITY. AS THE POLICY WAS DEVELOPED FROM THE GET GO, IT WAS AMNESTY-BASED FOR THOSE IN UTERO. AND THERE WAS A GENERAL DECISION TO USE THE REGULAR CRIMINAL PROCESS AFTER DAMAGE BEING DONE, AFTER BIRTH, WHICH WAS QUICKLY CHANGED THREE OR FOUR MONTHS INTO IT.

Q. WELL, NOW YOU SAY THAT THE GENERAL CRIMINAL PROCESS ORIGINALLY WAS AFTER THE DAMAGE HAD BEEN DONE YOU WOULD PROSECUTE CRIMINALLY. THERE WAS NOT ONE CASE, WAS THERE, IN WHICH THERE WAS ANY EVIDENCE OF ANY DAMAGE BEING DONE TO THE CHILDREN OF THE MOTHERS WHO YOU ARRESTED AFTER GIVING BIRTH IN THE ORIGINAL STAGES OF THE POLICY?

MR. HOOD: IF THE COURT PLEASE, I THINK YOU RULED ON THIS SUBJECT. THE HEALTH OF THE BABIES.

THE COURT: I THOUGHT THAT I DID. I THOUGHT THAT I SAID THAT THE HEALTH OF THE BABIES WAS SOMETHING THAT I WAS

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**[CONDON 81]**

DEPOSITION AND, GENERAL, FIRST OF ALL YOU DO REMEMBER GIVING THAT DEPOSITION, DON'T YOU?

A. I REMEMBER GIVING ONE, YES.

Q. GENERAL, WOULD YOU LOOK AT EXHIBIT -- YOU PICK, FOUR, FIVE, SIX, SEVEN, EIGHT THE EXHIBITS THAT WERE ATTACHED TO IT. IT'S THE OTHER PILE THERE?

A. EXCUSE ME. THESE PINK SHEETS HERE.

Q. THE PINK SHEETS SEPARATE THE EXHIBITS BY NUMBER, AND THEY'RE EACH CONSECUTIVELY NUMBERED, AND SO IF YOU LOOK AT EXHIBIT 4 OR 5 OR EXHIBIT 7 OR EXHIBIT 8.

A. RIGHT.

Q. IT REFERS, DOESN'T IT, GENERAL, TO AN INTERAGENCY POLICY CONNECTED WITH THE IDENTIFICATION AND PROSECUTION OF COCAINE AND ALCOHOL OR DRUGS AND ALCOHOL?

A. RIGHT, THE LETTER SAYS THAT.

Q. YES. AND THAT LETTER, BY THE WAY, WAS A LETTER THAT YOU WROTE, RIGHT?

A. I THINK I PREPARED IT. I KNOW CHIEF GREENBERG IS A CO-SIGNATURE. I THINK WE PREPARED IT.

Q. CHIEF GREENBERG, RIGHT HERE IN THE COURTROOM?

A. YES.
Q. BECAUSE THE INTERAGENCY POLICY WAS A POLICY AMONG THE FOLLOWING AGENCIES, YOUR OFFICE AS SOLICITOR, CHIEF GREENBERG AS THE CHIEF OF POLICE, THE MEDICAL UNIVERSITY OF SOUTH CAROLINA, AT SOME POINT IN TIME DSS, RIGHT?

**[CONDON 82]**

A. CORRECT.
Q. SO, TWO OF THE PEOPLE WHO HEADED AGENCIES THAT WERE PART OF THE INTERAGENCY POLICY AT LEAST IDENTIFIED IT WHEN THAT LETTER WAS WRITTEN AS FOCUSING ON DRUGS AND ALCOHOL, FAIR?
A. RIGHT. THE LETTER INVITED PEOPLE TO COME AND DISCUSS A POLICY.
Q. AND IN FACT, GENERAL, AS THE POLICY DEVELOPED, THE CRITERIA USED TO IDENTIFY THOSE WOMEN WHO WOULD BE TESTED IN THE DRUG SCREEN CONTAINED THE CRITERIA OF KNOWN DRUG OR ALCOHOL ABUSE, DIDN'T IT?
A. YES. I THINK THAT'S CORRECT.
Q. BUT ALCOHOL HAD NOTHING TO DO WITH THE POLICY?
A. AS I RECALL, WHEN WE GOT AROUND TO TALK ABOUT IT, IT WAS THE GROUP'S DECISION THAT SINCE ALCOHOL WAS LEGAL, THAT IT WOULD BE BEST TO ATTACK THE PROBLEM -- THE MAIN PROBLEM AS WE

SAW IT, WHICH WOULD BE THE ILLEGAL USE OF CRACK COCAINE, AS I RECALL.

Q. WELL, GENERAL, WAS THE MAIN PROBLEM AS YOU SAW IT THE ILLEGAL USE OF CRACK COCAINE OR THE DANGER TO UNBORN CHILDREN?

A. WELL BOTH. THE DANGER TO UNBORN CHILDREN OR CHILDREN IN GENERAL THROUGH CRACK COCAINE.

Q. IF THE PROBLEM WAS JUST THE ILLEGAL USE OF COCAINE, HAVING NOTHING TO DO WITH PREGNANT WOMEN, THAT WOULD NOT BE SOMETHING THAT WOULD CONCERN THE HOSPITAL, WOULD IT?

A. WELL, I THINK IMPETUS HERE WERE THE BABIES.

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**[CONDON 85]**

MEDICAL UNIVERSITY OF SOUTH CAROLINA?

A. THAT WOULD BE A FAIR STATEMENT.

Q. GENERAL, AT NO TIME IN THE COURSE OF THIS POLICY DO YOU HAVE ANY KNOWLEDGE OF EITHER YOUR OFFICE OR CHIEF GREENBERG'S DEPARTMENT OBTAINING SEARCH WARRANTS TO GET THAT INFORMATION OR COURT AUTHORIZED SUBPOENAS TO GET THE INFORMATION; ISN'T THAT SO?

A. I DON'T HAVE A SPECIFIC RECOLLECTION OF SEARCH WARRANTS OR NON-SEARCH WARRANTS. I DON'T KNOW.

Q. WELL, GENERAL, IT WAS YOUR POSITION, AS SOLICITOR, WHEN

YOU WERE THE SOLICITOR, TO RECOGNIZE THE LAW FAVORS THE ISSUANCE OF SEARCH WARRANTS, FAIR?
A. WELL, NO, I THINK THAT THE HASSLE FACTOR FAVORS THE ISSUANCE OF A SEARCH WARRANT. IF YOU ISSUE A SEARCH WARRANT, THAT GENERALLY DOESN'T GIVE ARGUMENTS ON THE OTHER SIDE. IT'S A PREFERRED METHOD. I WOULD SAY THAT JUST IN TERMS OF SOLVING PROBLEMS.
Q. YOU REMEMBER IN YOUR DEPOSITION, AND I'LL FIND THE PAGE IF YOU WANT - JUST BY THE WAY, DID YOU REREAD YOUR DEPOSITION IN CONTEMPLATION OF YOUR TESTIMONY HERE?
A. A COUPLE OF WEEKS AGO.
Q. DO YOU RECALL THE DEPOSITION WHEN YOU WERE TALKING ABOUT - WHEN YOU WERE TALKING ABOUT SCHERBER VERSUS CALIFORNIA?
A. VAGUELY.
Q. YOU COMMENTED AS SOLICITOR THAT THE LAW FAVORED SEARCH

**[CONDON 86]**

WARRANTS. DO I NEED TO FIND THAT?
A. THAT WOULD BE A FAIR STATEMENT TO SAY THAT THERE IS A PREFERENCE, FROM MY VIEW, FOR SEARCH WARRANTS JUST BECAUSE IT SOLVES LOTS OF PROBLEMS.
Q. YOU WERE A MAJOR PARTICIPANT IN GETTING THIS POLICY DEVELOPED, WEREN'T YOU?

A. I THINK THAT WOULD BE A FAIR STATEMENT.
Q. DID YOU MAKE ANY PROVISION IN THE POLICY FOR OBTAINING SEARCH WARRANTS OR SUBPOENAS FOR THIS MEDICAL INFORMATION?
A. WELL, TO GIVE YOU THE BACKDROP HERE -
Q. NO, SIR. NO, I DON'T NEED THE BACKDROP. I ASKED WHETHER YOU MADE ANY PROVISION FOR IT?
A. NOT THAT I CAN RECALL.
Q. AND IN FACT, GENERAL, THERE WERE NO INTERNAL DISCUSSIONS IN YOUR OFFICE OR WITH CHIEF GREENBERG ABOUT OBTAINING SEARCH WARRANTS OR SUBPOENAS, WERE THERE?
A. SIX OR SEVEN YEARS AGO, I CAN'T RECALL.
Q. WELL, LOOK AT PAGE 86 OF YOUR DEPOSITION. BEGINNING ON LINE 21. WHEN YOU GAVE YOUR DEPOSITION, GENERAL, YOU HAD NO RECOLLECTION OF ANY SUCH DISCUSSION, DID YOU?
A. YEAH, I THINK THAT'S WHAT I'M SAYING TODAY, AREN'T I?
MR. HOOD: THE ANSWER IS, YOUR HONOR, HE CAN'T RECALL. I THINK IF HE IS GOING TO REFER TO IT, IT'S IMPROPER USE OF THE DEPOSITION. IT'S THE SAME AS WHAT HE JUST SAID.
THE COURT: LET'S READ THE QUESTION AND ANSWER. I

THINK YOU HAVE CREATED AN INFERENCE, I'M NOT SURE WHAT THE INFERENCE IS, THAT IS AN INFERENCE THAT HE SAID SOMETHING EARLIER ON THE SUBJECT, I THINK.

Q. (BY MR. WHERRY, CONTINUING) QUESTION: DID YOU EVER HAVE ANY INTERNAL DISCUSSION WITHIN YOUR OFFICE THAT YOU RECALL ABOUT WHETHER SUBPOENAS OR SEARCH WARRANTS SHOULD BE OBTAINED FOR MEDICAL RECORDS?

ANSWER: I CAN'T RECALL.

THE COURT: OKAY

Q. (BY MR. WHERRY, CONTINUING) GENERAL, EARLY ON YOU HAD NO COOPERATION OR NO ASSISTANCE FROM DSS WITH THE INTERAGENCY POLICY; IS THAT CORRECT?

A. WELL, THEY WERE INVITED TO THE MEETINGS. I THINK THEY SENT REPRESENTATIVES. AS I RECALL THEIR LEGAL POSITION FOR A GOOD BIT OF TIME WOULD BE THAT THEY WOULD HAVE NO JURISDICTION OVER UNBORN CHILDREN. PERIOD.

Q. SO I TAKE IT THE ANSWER TO MY QUESTION IS: YOU GOT NO COOPERATION WITH THEM IN THE OPERATION OF THE INTERAGENCY POLICY; IS THAT CORRECT?

A. WELL, AS I RECALL THEY WOULD BE COOPERATIVE AFTER THE CHILD WAS BORN IN TERMS OF A REPORT. THEY WOULD BE. COOPERATIVE THERE. WE WANTED TO GET INVOLVED AS EARLY AS POSSIBLE TO STOP THE DAMAGE, AND THEY WOULD NOT COOPERATE IN

TERMS OF DOING THAT WITH THEIR OFFICE.
Q. YOU MENTIONED IT IN YOUR DIRECT TESTIMONY A NUMBER OF

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**[CONDON 96]**

ASSISTANTS AND ME PERSONALLY.
Q. MR. HEMPHILL WORKED FOR YOU?
A. YES, SIR.
Q. HE TOOK HIS INSTRUCTIONS FROM YOU?
A. YES.
Q. LET ME SHOW YOU WHAT HAS BEEN MARKED PLAINTIFF'S EXHIBIT 83-A. AND I'M NOT SURE IF IT'S IN EVIDENCE OR NOT, BUT FIRST OF ALL LET ME ASK YOU, AND I'LL MOVE IT IN, DO YOU RECOGNIZE THAT AS BEING A MEMO SENT BY YOU TO MR. HEMPHILL?
A. I DO.
Q. APRIL 2, 1991?
A. YES.
Q. MADE AND DONE IN THE ORDINARY COURSE OF YOUR BUSINESS AS SOLICITOR?
A. YES.
Q. CONTEMPORANEOUSLY WITH THE EVENT THAT IT RECORDS?
A. YES, I WOULD THINK SO.
Q. IT'S A BUSINESS RECORD, RIGHT?
A. I THINK SO.
MR. WHERRY: I MOVE IT INTO EVIDENCE AS PLAINTIFF'S EXHIBIT 83 A.

MR. HOOD: LET ME SEE IT.
THE COURT: ANY OBJECTION?
MR. HOOD: NO, SIR.
THE COURT: LET THE CLERK MARK IT IN, PLEASE.

**[CONDON 97]**

MR. WHERRY: I'M SORRY.
CLERK. PLAINTIFF'S EXHIBIT 83-A IN EVIDENCE.
Q. (BY MR. WHERRY, CONTINUING) IN THAT DOCUMENT, GENERAL, YOU SAY - WELL, WHY DON'T YOU READ IT WITH THE SENTENCE BEGINNING STARTING NEXT MONTH -
THIS IS A MEMO FROM YOU TO YOUR EMPLOYEES, RIGHT?
A. YES. "STARTING NEXT MONTH, IN ORDER TO BETTER TRACK THE WOMEN WHO ARE ARRESTED IN THE COCAINE BABY PROGRAM BUT ARE NOT PROSECUTED, WE WILL ENROLL THEM IN OUR PTI PROGRAM. I EXPECT ALL FEES WILL BE WAIVED BECAUSE OF THE INDIGENCY OF MOST OF THESE WOMEN."
Q. GENERAL, THAT WAS THE WRITTEN INSTRUCTIONS THAT YOU GAVE TO MR. HEMPHILL?
A. RIGHT. TO GET THEM INVOLVED.
Q. WELL, THE WRITTEN INSTRUCTIONS WAS SO THAT YOU COULD BETTER TRACK THEM, RIGHT?
A. YES.

Q. SO, GENERAL, ASSUMING THAT THE INTERAGENCY POLICY-BEGAN THE END OF '89, THE FIRST YEAR AND A HALF OR SO, PTI WASN'T INVOLVED IN IT, WAS IT?

A. NOT THAT I RECALL, NO.

Q. THAT WAS ANOTHER REVISION OF THE POLICY, RIGHT?

A. WELL, IT WAS AN AUGMENTATION, RIGHT, A CHANGE.

Q. REVISION, CHANGE, ARE ABOUT SYNONYMOUS WORDS, AREN'T THEY?

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**[CONDON 100]**

WERE GETTING UP THERE. I THINK WE HAD HUNDREDS AND HUNDREDS OF PEOPLE IN DRUG TREATMENT, AND IT SEEMED TO WORK QUITE WELL IN TERMS OF MOST PEOPLE GOING THROUGH, AND WANTED HIM TO HELP US. SO I DON'T RECALL THERE BEING ARRESTS WITH THE COCAINE MOMS.

Q. IT'S YOUR TESTIMONY THAT YOU GET INTO PTI WITHOUT BEING ARRESTED FIRST IN YOUR OFFICE?

A. CORRECT ME IF I'M WRONG, AS I RECALL -

Q. NOT WHAT YOU DID. WHAT THE PTI RULES WERE? COULD YOU GET INTO PTI WITHOUT BEING CHARGED CRIMINALLY?

A. THE GENERAL WAY THAT PRETRIAL INTERVENTION WOULD WORK

THROUGH THE GENERAL STATE CRIMINAL JUSTICE SYSTEM THERE WOULD BE AN ARREST. NOW, IF SOMEONE - I CAN'T RECALL THE CASE, BUT SPEAKING HYPOTHETICALLY, BUT IF SOMEONE CAME AND SAID WITHOUT AN ARREST I HAVE COMMITTED A CERTAIN CRIME AND I WANT TO GO INTO PRETRIAL INTERVENTION, I DON'T THINK OF ANY LAW THAT WOULD STOP THAT. SO USING THE GENERAL INHERENT POWER OF THE HOSPITAL, I ASKED MR. HEMPHILL TO TAKE ALL OF THE CASES INVOLVING CRACK COCAINE WITH THE MOTHERS WHO DIDN'T - WHO WEREN'T INVOLVED WITH AN ARREST.

Q. IT'S YOUR TESTIMONY THAT THE STATE STATUTE AUTHORIZES PTI DOES NOT REQUIRE THAT A PERSON BE ARRESTED BEFORE PTI BEING AVAILABLE?

A. I HAVEN'T LOOKED AT THE STATE STATUTE.

Q. THANK YOU. IT WASN'T IMPORTANT?

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

**EXCERPTS FROM TESTIMONY OF FRANCIS CORNELY**

**[CORNELY 316]**

(EXCERPT OF FRANCIS J. CORNELY, 12-6-97.)

- - -

FRANCIS J. CORNELY, PLF.
WITNESS, SWORN
DIRECT EXAMINATION
BY MS. DUNN:

Q. YOU'RE FRANK CORNELY; IS THAT CORRECT?
A. I AM.
Q. YOU WERE FORMERLY EMPLOYED AS AN ATTORNEY WITH THE SOLICITOR'S OFFICE WITH THE NINTH JUDICIAL CIRCUIT?
A. YES.
Q. YOU HAD THAT POSITION DURING THE FALL OF 1989?
A. I DID.
Q. AND I'M HANDING YOU A DOCUMENT PREMARKED PLAINTIFF'S EXHIBIT NUMBER 3. DO YOU RECOGNIZE THAT DOCUMENT?
A. YES, MA'AM, I DO.
Q. DID YOU WRITE THAT DOCUMENT?
A. YES, MA'AM, I DID.
Q. IS THE HANDWRITING ON THAT YOUR HANDWRITING?
A. YES, MA'AM, IT IS.

Q. AS YOU LOOK AT THE DOCUMENT, IT APPEARS THAT THIS IS A COPY OF A HANDWRITTEN DOCUMENT THAT HAD LIKE A BUSINESS CARD STAPLED ON THE TOP OF THAT. IS THAT AN ACCURATE DESCRIPTION OF WHAT YOU'RE HOLDING?
A. THIS LOOKS LIKE IT WAS AN OFFICE MEMORANDUM FROM THE SOLICITOR'S OFFICE AND IT HAS A - YES, IT HAS A BUSINESS CARD

**[CORNELY 317]**

STAPLED TO THE TOP OF ITS OVER THE OFFICE MEMORANDUM.
Q. AND TO WHOM DID YOU WRITE THIS LETTER?
A. IT APPEARS THAT I WROTE THE LETTER TO CHARLIE CONDON, WHO WAS SOLICITOR AT THE TIME.
MS. DUNN: YOUR HONOR, I WOULD LIKE TO MOVE THIS INTO EVIDENCE.
MS. COMPANION: NO OBJECTION.
DEPUTY CLERK: PLAINTIFF'S EXHIBIT NUMBER 3 IN EVIDENCE.
Q. (BY MS. DUNN, CONTINUING) MR.CORNELY, I'M HANDING YOU A DOCUMENT MARKED PLAINTIFF'S EXHIBIT 14. DO YOU RECOGNIZE THIS DOCUMENT?
A YES, MA'AM, I DO.
Q. AND IS THIS A COPY OF A DOCUMENT THAT YOU SENT IN YOUR CAPACITY AS ASSISTANT SOLICITOR IN 199?
A. YES, MA'AM.

Q. AND THIS DOCUMENT APPEARS TO HAVE BEEN SENT TO SHIRLEY BROWN?
A. THAT'S CORRECT.
Q. AND DO YOU HAVE ANY DOUBT THAT THAT DOCUMENT WAS SENT FROM YOUR OFFICE TO MS. BROWN?
A. I HAVE NO INDEPENDENT RECOLLECTION THAT IT WAS SENT, BUT IT APPEARS TO HAVE BEEN TYPED AND SENT AND FROM ME TO SHIRLEY BROWN AT THE MEDICAL UNIVERSITY.
Q. AND WOULD A COPY OF SUCH A DOCUMENT HAVE BEEN KEPT IN

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**[CORNELY 319]**

THAT I KNOW THAT AS YOU SAID THAT PART OF IT WAS OBSCURED BY A BUSINESS CARD.
A. THAT'S CORRECT.
Q. CAN YOU TELL ME WHAT THAT DATE WAS? IT LOOKS LIKE 11-89?
A. IT JUST HAS A SLASH MARK AND '89. I CAN'T TELL, BUT IT WOULD HAD TO HAVE BEEN EITHER 10 - IT WOULD HAVE TO BE OCTOBER, NOVEMBER OR DECEMBER '89, BECAUSE I LEFT THE SOLICITOR'S OFFICE IN DECEMBER OF '89.
MS. COMPANION: THANK YOU.
Q. (BY MS. COMPANION, CONTINUING) MR. CORNELY, SHIRLEY BROWN DIDN'T WORK FOR THE SOLICITOR'S OFFICE, DID SHE?
A. NO, MA'AM.
Q. AND WHAT WAS YOUR UNDERSTANDING OF THE GOAL OF THE

POLICY?

MS. DUNN: OBJECTION, YOUR HONOR, THIS IS BEYOND THE SCOPE OF THE WITNESS.

THE COURT: WHAT WAS THE QUESTION?

MS. COMPANION: WHAT WAS HIS UNDERSTANDING OF THE GOAL OF THE POLICY.

THE COURT: YOU'LL HAVE TO LAY A FOUNDATION FOR THAT

Q. (BY MS. COMPANION, CONTINUING) MR. CORNELY, WHAT WAS YOUR JOB AT THE SOLICITOR'S OFFICE?

A. AT THIS TIME WE'RE TALKING ABOUT THE FALL OF '89, I WAS ASSISTANT SOLICITOR WHO PROSECUTED ALL OF THE CHILD ABUSE AND

**[CORNELY 320]**

NEGLECT CASES. WHICH WOULD MEAN THAT I PROSECUTED ALL OF THE CASES WHERE CHILDREN WERE VICTIMS.

Q. AND DID YOU HAVE ANY INVOLVEMENT WITH WHAT CAME TO BE KNOWN AS THE INTERAGENCY POLICY?

A. INTERAGENCY POLICY CONCERNING?

Q. CONCERNING SUBSTANCE-ABUSING PREGNANT WOMAN?

A. YES, VERY BRIEFLY BECAUSE I - IF I UNDERSTAND THE TIME FRAME CORRECTLY, IT WAS - WE WERE TALKING ABOUT SEPTEMBER, OCTOBER AND NOVEMBER OF '89. AND I LEFT IN DECEMBER OF '89, SO THREE OR FOUR MONTHS I WAS SOMEWHAT INVOLVED, YES, MA'AM.

Q. AND WHAT WAS YOUR INVOLVEMENT?
A. AS I RECOLLECT, CHARLIE CONDON, WHO WAS THE SOLICITOR AT THE TIME, ASKED MYSELF AND CINDY LEGARE, WHO WAS MY INVESTIGATOR, TO GO TO THE MEDICAL UNIVERSITY TO MEET WITH SHIRLEY BROWN AND DR. SCHUH BECAUSE THEY HAD SOME - THEY WERE INTERESTED IN ESTABLISHING SOME PROCEDURES AND POLICIES IN DEALING WITH MOTHERS WHO WERE BEING INVOLVED WITH DRUGS OR GETTING INVOLVED IN DRUGS WHILE THEY WERE PREGNANT.
Q. WHEN YOU SAY THEY WERE INTERESTED, TO WHOM DO YOU REFER?
A. I DON'T KNOW WHETHER I CAN DO THAT OR NOT BECAUSE I ASSUME THAT MR. CONDON GOT A PHONE CALL FROM SOMEONE AT THE MEDICAL UNIVERSITY WHICH PROMPTED HIM TO ASK ME TO GO OVER THERE.
Q. AND WHAT WAS YOUR UNDERSTANDING OF THE GOAL OF THE POLICY?

**[CORNELY 321]**

MS. DUNN: OBJECTION AGAIN.
THE COURT: AGAIN, I DON'T THINK YOU HAVE LAID A PROPER FOUNDATION. JUST BECAUSE HE WENT OVER THERE ONE TIME, I DON'T THINK THAT'S ENOUGH.
Q. (BY MS. COMPANION, CONTINUING) DID YOU HAVE ANY OTHER

INVOLVEMENT, MR. CORNELY?
A. I OBVIOUSLY WROTE SOME MEMOS AND A LETTER, BUT I DON'T HAVE ANY INDEPENDENT RECOLLECTION OF ANYTHING ELSE THAT I DID TOWARD THAT BECAUSE, AGAIN, I LEFT SHORTLY THEREAFTER.
Q. IS IT FAIR TO SAY THAT YOU WERE INVOLVED WITH THE - SOME ASPECT OF THE FORMULATION OF THE POLICY?
A. YES.
Q. AND FROM THAT DID YOU GAIN AN UNDERSTANDING OF WHAT THE GOAL OF THE POLICY WAS TO BE?
A. YES.
Q. AND WHAT WAS THAT UNDERSTANDING?
A. WE - THE WAY I UNDERSTOOD IT WAS THAT IT WAS AN ATTEMPT TO INTERVENE ON BEHALF OF THE UNBORN CHILDREN AND OFFER THE MOTHERS SOME SUBSTANCE ABUSE COUNSELING OR SOMETHING ELSE IN AN EFFORT TO KEEP THEM OFF OF CRACK COCAINE, BECAUSE I BELIEVE THAT IT WAS BECOMING A PROBLEM AT THE MEDICAL UNIVERSITY THE NUMBER OF BABIES WHO WERE BORN WITH HEALTH PROBLEMS AS A RESULT OF THEIR MOTHERS INGESTING DRUGS WHILE THEY WERE PREGNANT.
Q. WAS IT YOUR UNDERSTANDING THIS WAS TO BE A

**[CORNELY 322]**

MULTIDISCIPLINARY APPROACH?

A. YES, MA'AM.
Q. CAN YOU EXPLAIN WHAT MULTIDISCIPLINARY APPROACH MEANS?
A. WELL DIFFERENT AGENCIES, A NUMBER OF DIFFERENT AGENCIES, I BELIEVE THE CITY OF CHARLESTON WAS INVOLVED, DSS WAS INVOLVED, THE SOLICITOR'S OFFICE WAS INVOLVED, SOME REPRESENTATIVES OF THE MEDICAL UNIVERSITY WERE INVOLVED. SO THAT IS WHY IT WAS CALLED MULTIDISCIPLINARY.
Q. AND IN YOUR POSITION IN THE SOLICITOR'S OFFICE HAD YOU EVER BEEN INVOLVED - WITH YOUR POSITION IN THE SOLICITOR'S OFFICE AS PROSECUTOR FOR CHILD - EXCUSE ME, FOR CHILD ABUSE AND NEGLECT CASES, HAD YOU EVER BEEN INVOLVED IN ANY OTHER MULTIDISCIPLINARY FORCES ADDRESSING CHILD ABUSE?
MS. DUNN: OBJECTION, YOUR HONOR, I DON'T KNOW WHAT THAT'S RELEVANT TO, AND CERTAINLY BEYOND THE SCOPE.
THE COURT: GO AHEAD. IT.
Q. (BY MS. COMPANION, CONTINUING) DID YOU DO THIS WITH ANY OTHER HOSPITAL OR ANY OTHER AGENCY?
A. YES, I WAS.
Q. AND CAN YOU EXPLAIN THAT TO ME, PLEASE.
A. JUST PRIOR TO LEAVING THE SOLICITOR'S OFFICE I WAS INVOLVED IN A TASK FORCE TO ESTABLISH A MULTIDISCIPLINARY

APPROACH TO THE PROSECUTION OF CHILD ABUSE AND NEGLECT CASES.
I WENT WITH A NUMBER OF DIFFERENT PEOPLE TO ALABAMA TO VIEW A FACILITY THEY HAD THERE. AND AFTERWARD WE ESTABLISHED THE LOW

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

**EXCERPTS FROM TESTIMONY OF VICTOR DEL BENE**

**[DEL BENE 486]**

THE COURT: JUST AS EASY TO ASK HIM WHERE DO YOU LIVE.

MR. HOOD: NO PROBLEM.

Q. (BY MR. HOOD, CONTINUING) YOU WENT TO COLLEGE WHERE, DOCTOR?

A. MANHATTAN COLLEGE.

Q. OKAY. GRADUATED WHEN?

A. IN 1961.

Q. WENT TO MEDICAL SCHOOL WHERE?

A. YES, AT COLLEGE OF MEDICINE, GEORGETOWN UNIVERSITY.

Q. GRADUATED WHEN?

A. IN '65.

Q. AFTER DOING YOUR INTERNSHIP AND TRAINING AND FELLOWSHIP YOU ENDED UP BECOMING SPECIALIZED IN WHAT FIELD OF MEDICINE?

A. I'M AN INTERNIST AND I'M ALSO AN INFECTIOUS DISEASE PHYSICIAN.

Q. ALL RIGHT, SIR. AND ARE YOU A LICENSED PRACTICING PHYSICIAN IN THE STATE OF SOUTH CAROLINA IN THOSE FIELDS?

A. I AM. I AM.

Q. AND IN 1967 AND '69 DID YOU SERVE IN THE UNITED STATES

MILITARY?
A. I WAS IN THE NAVY.
Q. WHAT WAS YOUR HIGHEST RANK?
A. LIEUTENANT COMMANDER.
Q. HOW LONG HAVE YOU BEEN HERE AT THE MEDICAL UNIVERSITY IN

**[DEL BENE 487]**

CHARLESTON?
A. SINCE 1972.
Q. AND YOU ARE CURRENTLY EMPLOYED AT THE MEDICAL UNIVERSITY IN WHAT CAPACITY, DOCTOR?
A. I'M A PHYSICIAN IN INTERNAL MEDICINE AND INFECTIOUS DISEASES. AND I'M ALSO ASSOCIATE DEAN OF STUDENTS IN THE COLLEGE OF MEDICINE.
Q. ALL RIGHT, SIR. AND STARTING IN 1986 FOR SIX CONTINUOUS YEARS, UP UNTIL 1996, HAVE YOU RECEIVED AWARDS FOR TEACHING AT THE MEDICAL UNIVERSITY?
A. YES.
Q. AND WHAT IS THE AWARD THAT YOU HAVE RECEIVED EACH OF THOSE YEARS?
A. TEACHING EXCELLENCE.
Q. ALL RIGHT, SIR. CONGRATULATIONS.
NOW, OF THE MANY COMMITTEES THAT ARE LISTED ON YOUR BIOGRAPHICAL SKETCH I'M INTERESTED IN ONE. IN OCTOBER OF '88 WHAT COMMITTEE DID YOU SERVE ON AT THE-MEDICAL UNIVERSITY?
A. I WAS THE CHAIRMAN OF THE HOSPITAL EXECUTIVE COMMITTEE.

Q. AND DID YOU REMAIN ON THAT COMMITTEE UNTIL A CERTAIN TIME? AND IF SO, WHEN?
A. NOVEMBER 1990.
Q. BY THE WAY, HAVE YOU PUBLISHED ARTICLES IN THE MEDICAL LITERATURE IN YOUR FIELD OF EXPERTISE?
A. I HAVE.

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**[DEL BENE 489]**

A EIGHT THOUSAND.
Q. AND OF THOSE, ABOUT HOW MANY ARE PHYSICIANS?
A. IT DEPENDS IF YOU COUNT THE HOUSE STAFF PHYSICIANS AND THE ATTENDING PHYSICIANS. THERE ARE ABOUT 450 SOME ODD HOUSE STAFF PHYSICIANS, THOSE ARE INTERNS, RESIDENTS AND FELLOWS.
Q: YES, SIR.
A. AND I THINK PROBABLY AROUND FOUR HUNDRED PHYSICIANS ATTENDANT.
Q. OKAY. DOCTOR, WE ARE HERE TRYING A CASE INVOLVING THE. INTERAGENCY POLICY. WAS THAT POLICY PRESENTED TO THE COMMITTEE THAT YOU WERE CHAIRMAN OF, THE EXECUTIVE COMMITTEE OF THE MEDICAL UNIVERSITY?
A. THE HOSPITAL EXECUTIVE COMMITTEE, YES. YES, THAT'S THE COMMITTEE.
Q. YES, SIR.
A. YES, IT WAS PRESENTED.
Q. AND WAS THAT POLICY ULTIMATELY APPROVED BY THE COMMITTEE

YOU WERE CHAIRMAN OF?
A. IT WAS.
Q. AND WAS THE POLICY AS PROPOSED CONSISTENT WITH THE NORMS AND STANDARDS FOR THE APPROVAL OF PROTOCOLS AND POLICIES AT THE MEDICAL UNIVERSITY?
A. YES.
Q. AND WHEN WAS THE POLICY CONSIDERED BY THE EXECUTIVE COMMITTEE APPROVED APPROXIMATELY?

**[DEL BENE 490]**

A. NOVEMBER OF 1989.
Q. ALL RIGHT, SIR. AND YOU WERE CHAIRMAN AT THAT TIME
A. I WAS.
Q. YOU ALSO SIT ON THE BOARD OF THE MEDICAL UNIVERSITY?
A. NO, I DON'T.
Q. YOU DON'T?
A. NO.
Q. WAS THIS POLICY ULTIMATELY SUBMITTED TO THE ENTIRE BOARD OF THE MEDICAL UNIVERSITY FOR APPROVAL?
A. IT WAS.
Q. AND IS THAT CONSISTENT WITH THE NORMS AND STANDARDS FOR THE APPROVAL OF SUCH A POLICY?
A. YES.
Q. AND WAS IT APPROVED BY THE BOARD OF THE MEDICAL UNIVERSITY?
A. IN JANUARY OF 1990.
Q. WHY DID IT TAKE SO LONG TO GET IT APPROVED?
A. UMM -

Q. NOVEMBER OF '89 TO JANUARY?
A. I KNOW. THERE WAS A - NOT A REGULAR MEETING OF THE BOARD BETWEEN THOSE TWO, BECAUSE OF AN EMERGENCY MEETING OF THE BOARD WAS CALLED TO ASSESS THE DAMAGE TO THE MEDICAL UNIVERSITY FROM THE STORM THAT CAME THROUGH.
Q. HURRICANE HUGO.
A. SO REGULAR BUSINESS WAS POSTPONED UNTIL JANUARY OF 1990.

**[DEL BENE 491]**

Q. DID THIS POLICY GO THROUGH THE NORMAL STANDARDS AND METHODS BY WHICH POLICIES ARE SUBMITTED TO THE EXECUTIVE COMMITTEE AND ULTIMATELY TO THE FULL BOARD THAT GOVERNS THE MEDICAL UNIVERSITY?
A. YES.
Q. ARE THE CONTENTS OF THE POLICY CONSISTENT WITH THOSE NORMAL STANDARDS AND PROTOCOLS AND THE NORMS FOR THE MEDICAL UNIVERSITY?
A. YES.
Q. AND WHEN THE POLICY WAS REVISED, WAS THERE ANY NEED TO TAKE THE POLICY BACK THROUGH YOUR COMMITTEE AND BACK TO THE BOARD?
A. IT DEPENDS. IF - IF THERE ARE MINOR CHANGES AND CHANGES WHICH ARE NOW ADDING TO THE POLICY, THEY MIGHT BE LEFT - THE

REVIEW MIGHT BE LEFT TO THE REGULAR CYCLE FOR REVIEW OF POLICY.

Q. OKAY. HERE THE CHANGE WAS ADDITIONAL CRITERIA FOR TESTING REQUIRING URINE DRUG SCREENS. WOULD THAT REQUIRE GOING BACK THROUGH THE WHOLE DEAL AGAIN?

A. IF IT WAS ADDITIONAL?

Q. YES. ADDED TWO OR THREE ADDITIONAL CRITERIA, I BELIEVE.

A. IF IT WAS ADDING TO THE POLICY, IF IT WAS MAKING IT MORE STRICT OR MORE DIFFICULT, IT PROBABLY SHOULD GO THROUGH. BACK THROUGH.

Q. AND IF THE POLICY ORIGINALLY CALLED FOR THE ARREST ON

**[DEL BENE 492]**

DELIVERY OF A WOMAN WHO TESTED POSITIVE, AND THREE MONTHS LATER WAS CHANGED SO THAT THAT WOMAN WAS GIVEN THE OPTION OF AMNESTY IF SHE WENT INTO SUBSTANCE ABUSE, WOULD THAT REQUIRE GOING BACK THROUGH THE EXECUTIVE COMMITTEE AND THE FULL BOARD?

A: IT MIGHT NOT, NO.

Q: THANK YOU. ARE THERE MANY NORMS AND STANDARDS, PROTOCOLS THAT GO THROUGH THE EXECUTIVE COMMITTEE AND ULTIMATELY TO THE BOARD AT THE MEDICAL UNIVERSITY THAT END UP BEING POLICIES IN THE HOSPITAL?

A. THE HOSPITAL, YES, QUITE A FEW.

Q. AND WAS THIS INTERAGENCY POLICY ANY DIFFERENT THAN ANY OF THE OTHERS?
A. WELL, EACH ONE ADDRESSES A DIFFERENT PROBLEM OR TOPIC. BUT THEY - THEY COME THROUGH THE SAME PROCESS. AND THEY ARE CONSIDERED IN THE SAME WAY. AND THEY ARE EITHER APPROVED OR NOT.
Q. WAS THERE ANYTHING ABOUT THIS POLICY WHICH WAS FORMULATED OR IMPLEMENTED, TO YOUR PERSONAL KNOWLEDGE, IN A DISCRIMINATORY FASHION?
A. NOT TO MY KNOWLEDGE.
Q. WOULD THE EXECUTIVE COMMITTEE OF THE BOARD HAVE APPROVED ANY POLICY THAT DISCRIMINATED?
MR. WHERRY: OBJECTION. -
MR. HOOD: YOU WERE CHAIRMAN.
MR. WHERRY: COMPETENCE.
* * *

**[DEL BENE 507]**

Q. HOW IT WOULD WORK?
A. I WOULD PRESENT IT. PRESENT THE POLICY TO THEM. IT'S -
Q. AND ONE OF THE THINGS THAT WAS PART OF HOW IT WOULD WORK WAS WHETHER OR NOT THE PATIENTS WOULD BE ARRESTED, FAIR?
MR. HOOD: IF THE COURT PLEASE, THE POLICY DOES NOT MENTION ARREST.
THE COURT: I'LL PERMIT IT. I THINK HE IS LAYING

THE PROPER FOUNDATION FOR IT.
Q. (BY MR. WHERRY, CONTINUING) FAIR?
A. IT WOULD BE - I WOULD PRESENT TO THEM JUST WHAT THE POLICY SAYS. AND WHAT WAS DISCUSSED IN PRESENTING IT AT THE HOSPITAL EXECUTIVE COMMITTEE.
Q. WELL, DOCTOR, WAS - WELL, WAS IT WHAT THE POLICY SAID OR WHAT THE POLICY WAS GOING TO DO?
A. I DON'T GET THE DISTINCTION.
Q. OKAY. IF THE POLICY SAID WE'RE NOT GOING TO ARREST ANYONE, BUT IN FACT THEY HAD ARRESTED PEOPLE AND WERE PLANNING ON DOING IT, IT WOULD BE NOT SO IMPORTANT WHAT THE POLICY SAID BUT WHAT IT WAS GOING TO DO; ISN'T THAT FAIR?
A. I WOULD REPORT WHAT THE POLICY PURPORTED TO BE PUT IN PLACE TO DO.
Q. OKAY. AND IN THIS CASE OF THIS INTERAGENCY POLICY YOU DID NOT KNOW, AND THEREFORE DIDN'T REPORT THAT THE IMPLEMENTATION OF THE POLICY WOULD INVOLVE ARRESTING PATIENTS, DID YOU?

**[DEL BENE 508]**

A. I REPORTED WHAT THE POLICY WAS.
Q. AND DID THAT INCLUDE THE REST OF THE PATIENTS?
A. WELL I'M NOT SURE. IT'S A LONG TIME AGO. I CAN'T REMEMBER EXACTLY WHAT WAS SAID.

MR. WHERRY: I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: REDIRECT?

MR. HOOD: NO.

THE COURT: THANK YOU, DOCTOR. YOU'RE EXCUSED.

ANYTHING ELSE?

MR. HOOD: WE'VE GOT SOME MORE WITNESSES.

THE COURT: HERE?

MR. HOOD: YES, SIR. WHATEVER YOU WANT TO DO.

THE COURT: I TIPPED MY HAND WHEN I TOLD HIM I WANTED TO MOVE.

LADIES AND GENTLEMEN, WE'RE GOING TO RECESS. I HAVE BEEN THINKING ABOUT THE LENGTH OF OUR RECESS AND I HAVE REALLY. REGRETTED THAT WE HAVE GOT TO RECESS, BECAUSE I'M NOT GOING TO BE AVAILABLE THE REST OF THIS WEEK. BUT WHEN I STARTED THINKING ABOUT IT TODAY, AS MUCH AS I LOVE TO PARTICIPATE IN THE TRIAL OF LAWSUITS, I REALLY THOUGHT THAT IT WOULD BE A GREAT RELIEF TO HAVE A FEW DAYS OFF, BECAUSE THIS IS NOT YOUR AVERAGE LAWSUIT, IT'S VERY COMPLICATED. IT'S VERY DIFFICULT I THINK FOR THE LAWYERS, AND CERTAINLY IT'S-DIFFICULT FOR ME TO DETERMINE EXACTLY WHAT IS ADMISSIBLE AND WHAT SHOULD BE HEARD

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

**EXCERPTS FROM TESTIMONY OF FRAMPTON DURBAN**

**[DURBAN 71]**

PAGE 71, LINE 17-20
PAGE 72, LINE 17-25
PAGE 73, LINE 1.

(REFER TO PREVIOUSLY FILED TRANSCRIPT OF TESTIMONY OF CELESTE PATRICK AND CRYSTAL FERGUSON.)

- - -

FRAMPTON DURBAN, PLF.
WITNESS, SWORN
DIRECT EXAMINATION

MS. DUNN:

Q. WOULD YOU STATE YOUR FULL NAME, PLEASE.

A. YES. FRAMPTON DURBAN.

Q. WHAT DO YOU DO?

A. I'M THE CHIEF LEGAL COUNSEL FOR THE CHARLESTON COUNTY DEPARTMENT OF SOCIAL SERVICES.

Q. AND WHAT DO YOU DO IN THAT CAPACITY?

A. I REPRESENT DSS IN ALL CIVIL ACTIONS INVOLVING ALLEGATIONS OF CHILD ABUSE AND NEGLECT IN CHARLESTON COUNTY.

Q. WHAT DOES IT MEAN WHEN YOU REFER TO A CIVIL ACTION

INVOLVING?
A. AS OPPOSED TO CRIMINAL. THESE ARE FAMILY COURT INTERVENTIONS ON BEHALF OF FAMILIES WHERE THERE WAS BEEN CHILD ABUSE AND NEGLECT.
Q. AND WHAT IS THE PURPOSE OF THOSE FAMILY COURT

**[DURBAN 72]**

INTERVENTIONS?
A. TO REUNITE THE PARENTS AND THE CHILDREN IF IT CAN BE DONE WITH THE CHILD'S BEST INTEREST.
Q. HOW LONG HAVE YOU HELD THAT POSITION?
A. WITH DSS SINCE NOVEMBER OF '94.
Q. AND WHAT DID YOU DO PRIOR TO TAKING THE POSITION WITH DSS IN 1994?
A. I WAS ASSISTANT SOLICITOR IN CHARGE OF THE FAMILY COURT DIVISION OF THE NINTH CIRCUIT SOLICITOR'S OFFICE.
Q. SO YOU WORKED FOR THE SOLICITOR'S OFFICE AT THAT POINT?
A. YES, I DID.
Q. WHAT DID YOU DO IN THAT CAPACITY?
A. I DID BASICALLY THE SAME THING THAT I'M DOING NOW EXCEPT FOR A DIFFERENT BOSS. AND I ALSO PROSECUTED JUVENILE OFFENSES.
Q. IN EITHER OF THE POSITIONS WHEN YOU WORKED FOR THE SOLICITOR'S OFFICE, OR NOW, DO YOU HAVE ANY DIRECT INVOLVEMENT

WITH ANY CRIMINAL PROSECUTION OF CRIMINAL CHILD ABUSE?
A. NO.
Q. WHEN DID YOU BEGIN YOUR POSITION AS ASSISTANT SOLICITOR?
A. IN THE SUMMER OF 1989.
Q. AND WHAT PART OF THE SUMMER?
A. JULY I BELIEVE IT WAS. FIRST OF JULY.
Q. AND WHEN YOU STARTED THAT JOB, DID YOU START IN THE SAME POSITION THAT YOU HELD UNTIL 1994?

**[DURBAN 73]**

A. I STARTED IN THE POSITION OF REPRESENTING THE DEPARTMENT OF SOCIAL SERVICES. THERE WERE TWO ATTORNEYS IN THAT OFFICE. WITHIN SIX MONTHS I WAS PROMOTED BY SOLICITOR CHARLIE CONDON TO MANAGING ASSISTANT SOLICITOR IN CHARGE OF ALL JUVENILE PROSECUTION AND CHILD ABUSE.
Q. WERE YOU FAMILIAR WITH THE CHILD ABUSE LAWS IN SOUTH CAROLINA IN THE SUMMER OF 1989?
A. I MADE MYSELF FAMILIAR WITH THEM PRETTY QUICK.
Q. WERE YOU ALSO FAMILIAR WITH THE CHILD ABUSE LAWS OF THE STATE OF SOUTH CAROLINA IN THE FALL OF 1989?
A. YEAH.
Q. WAS THERE ANY SIGNIFICANT CHANGE IN THOSE LAWS FROM JULY OF 1989 TO OCTOBER OF 1989?
A. NOT IN THE STATUTORY LAW, NO.

Q. WERE YOU FAMILIAR WITH A WORKING AGREEMENT THAT WEINT INTO PLACE IN THE CITY OF CHARLESTON POLICE, THE SOLICITOR'S OFFICE AND THE MEDICAL UNIVERSITY OF SOUTH CAROLINA CONCERNING THE MANAGEMENT OF DRUG-USING PREGNANT WOMEN OR POSTPARTUM WOMEN?

A. I WAS MADE AWARE OF THAT WORKING AGREEMENT SOME MONTHS AFTER I STARTED WITH THE SOLICITOR'S OFFICE.

Q. WHEN DID YOU RECALL LEARNING ABOUT IT FOR THE FIRST TIME?

A. I DON'T RECALL, BUT I BELIEVE IT WAS NEAR THE END OF THE YEAR 1989 OR FIRST OF THE YEAR 1990.

Q. DO I TAKE FROM THAT ANSWER THEN THAT YOU WERE NOT IN INVOLVED IN ANY OF THE INITIAL DESIGNING OF THAT POLICY?

* * *

**[DURBAN 75]**

LEVEL OF THAT RISK, WHETHER IT WAS A RISK SUFFICIENT TO WARRANT THE REMOVAL OF THE CHILD FROM THAT ENVIRONMENT OR WHETHER IT WAS THE RISK THAT COULD BE ADDRESSED WITH THE FAMILY UNIT INTACT. IN OTHER WORDS, LEAVING THE CHILD WHERE THE CHILD WAS AND WORKING WITH THE ENTIRE FAMILY UNIT WITHOUT REMOVING THE CHILD.

Q. MR. DURBAN, I HAD ASKED YOU SPECIFICALLY ABOUT A REPORT

OF SUSPECTED CHILD ABUSE THAT INVOLVED A PREGNANT WOMEN. WOULD THERE BE ANY REMOVAL ISSUES INVOLVED IN THAT SITUATION?

A. I DON'T UNDERSTAND YOUR QUESTION.

Q. IF THERE WAS A REPORT OF SUSPECTED CHILD ABUSE, WHEN WHAT WAS REPORTED IS: I'M WORKING WITH A PREGNANT WOMEN WHO IS USING DRUGS, THIS IS BABY CHILD ABUSE, THE DEPARTMENT SOCIAL SERVICES INVESTIGATES IF THAT WERE THE REPORT?

A. IF YOUR QUESTION IS THAT THE REPORT INVOLVED ALLEGATIONS OF ABUSE TO THE THEN UNBORN CHILD AS OPPOSED TO ANY OTHER CHILDREN THAT MAY BE IN THE HOME, DSS AS A MATTER OF POLICY AT THAT TIME DID NOT GET INVOLVED WITH ALLEGATIONS OF ABUSE TO UNBORN CHILDREN.

Q. AND WHAT TIME ARE YOU REFERRING TO?

A. IN THE SUMMER AND FALL OF 1989.

Q. DID THAT CHANGE IN THE - IN, SAY, THE EARLY PART OF 1990?

A. TO MY KNOWLEDGE IT DID NOT CHANGE UNTIL THE LAW CHANGED EARLIER THIS YEAR.

**[DURBAN 76]**

Q. SO THAT YOU'RE SAYING THAT IN THE SUMMER OF 1989, THE DEPARTMENT OF SOCIAL SERVICES' POSITION WAS THAT THERE WAS

NOTHING TO INVESTIGATE AT THAT POINT IF THERE WERE NOT OTHER CHILDREN IN THE HOME?

A. THAT'S CORRECT.

Q. IN THE SUMMER OF 1989, IF THE DEPARTMENT OF - SUMMER OF 1989. IF THE DEPARTMENT OF SOCIAL SERVICES HAD RECEIVED A REPORT OF SUSPECTED CHILD ABUSE THAT INVOLVED DRUG USE OF A PARENT, WHAT SORT OF RESOURCES DID THE DEPARTMENT OF SOCIAL SERVICES HAVE TO INVESTIGATE THAT KIND OF REPORT?

A. THEY HAD ASSESSMENT WORKERS, AS I SAID, WHO WERE TRAINED BY THE STATE WHO WORKED HAND-AND-HAND UNDER THE LAW WITH LAW ENFORCEMENT OFFICERS AND OTHER SERVICE PROVIDERS THAT HAD DIRECT KNOWLEDGE OF WHAT WAS GOING ON IN THE FAMILY TO ASSESS WHAT RISK, IF ANY, THERE WAS TO THE CHILDREN BY THE PARENTS.

SO THE INVESTIGATING WORKERS WOULD INTERVIEW, THEY WOULD HAVE AVAILABLE RECORDS, THEY WOULD HAVE AVAILABLE PEOPLE THAT WERE INVOLVED. LAW ENFORCEMENT INVESTIGATIONS WERE REQUIRED BY LAW TO BE SHARED WITH THE DEPARTMENT OF SOCIAL SERVICES. THOSE SORTS OF TOOLS.

Q. BUT WHAT KIND OF THINGS WOULD THE INVESTIGATOR LOOK AT TO DETERMINE WHAT SORT OF INTERVENTION THE DEPARTMENT OF SOCIAL SERVICES NEEDED TO MAKE?

A. THE LEVEL OF RISK. THE WAY THE LAW READS, IF THE RISK RISES TO THE LEVEL OF SUBSTANTIAL RISK OF DEATH OR SERIOUS

**[DURBAN 77]**

BODILY HARM, THEN THAT UNDER THE LAW WARRANTS THE REMOVAL OF THE CHILD FROM THAT ENVIRONMENT EITHER INTO PROTECTIVE CUSTODY. USUALLY INTO THE PROTECTIVE CUSTODY. IF THE RISK TO THE CHILD, WHATEVER IT MAY BE, DOESN'T RISE TO THAT LEVEL, THEN THE FAMILY CAN STILL BE SUBJECT TO SOCIAL SERVICES INTERVENTION WITHOUT THE CHILDREN BEING REMOVED, EITHER AS I SAID WITH THE CHILDREN REMAINING IN THE HOME WITH THE PARENTS OR BEING PLACED WITH A COLLATERAL RELATIVE WHO CAN TAKE CARE OF THEM WHILE TREATMENT IS BEING GIVEN TO THE PRIMARY PARENTS.

Q. WAS ONE OF THE ISSUES THAT SOMETIMES CAME UP WITH THE PROCESS OF INVESTIGATING SUSPECTED CHILD ABUSE THE FACT THAT A PARENT WHO WAS IN THE HOME WITH THE CHILD NEEDED TO BE IN SUBSTANCE ABUSE TREATMENT BUT WAS NOT?

A. WAS THAT AN ISSUE THAT CAME UP, IS THAT YOUR QUESTION?

Q. YES. YES.

A. WELL THAT WAS ALWAYS AN ISSUE. LOGISTICS OF TREATMENT

WAS ALWAYS AN ISSUE THAT HAD TO BE ADDRESSED. AND IT WAS FACTORED IN WHEN THEY WERE ANALYZING THE RISK AS TO WHETHER OR NOT THE PARENT WITHOUT THE CHILDREN HAVING A PLACEMENT OUT OF THE HOME, WOULD BE AVAILABLE FOR TREATMENT.

Q. WHAT -

A. AT THE LEVEL THAT THE SERVICE PROVIDERS FELT WAS NECESSARY.

Q. IF THE SERVICE PROVIDER FELT THAT A PARENT, A MOTHER OR A FATHER NEEDED TO BE IN SUBSTANCE ABUSE TREATMENT, BUT THAT

**[DURBAN 78]**

PARENT WASN'T, WHAT RESOURCES DID THE SERVICE PROVIDER HAVE IN ORDER TO PROVIDE THAT PARENT SOME INCENTIVE TO GET INTO TREATMENT?

A. INCENTIVE TO GET INTO TREATMENT?

Q. YES.

A. WOULD BE THE INTERVENTION OF THE FAMILY COURT.

Q. TELL ME WHAT THAT WOULD BE?

A. IT'S A MANDATED TREATMENT PLAN. A TREATMENT PLAN THAT DSS CASES ARE NOT CRIMINAL IN NATURE AND THEY'RE NOT MONETARY, WE'RE NOT SEEKING MONEY DAMAGES FROM ANYBODY AND NOT TRYING TO PUT ANYBODY IN JAIL. THE PURPOSE OF FAMILY COURT INTERVENTION IS COMPULSORY. IT'S TO MAKE THE PARENTS UNDER PENALTY OF A

COURT ORDER TO GO THROUGH WHATEVER TREATMENT PROGRAM HAS BEEN - HAS BEEN DESIGNED BY DSS AND ADOPTED BY THE COURT. SO THE INCENTIVE WOULD BE THE EXISTENCE OF THAT COURT ORDER IN ORDER TO GET TREATMENT.

Q. AND HOW WOULD THE DEPARTMENT OF SOCIAL SERVICE GO ABOUT OBTAINING SUCH A COURT ORDER IF IT WAS DEEMED THAT THAT WAS NECESSARY IN ORDER TO PROTECT THE CHILDREN?

A. THEY WOULD FILE AN ACTION IN FAMILY COURT ASKING FOR INTERVENTION AT SOME LEVEL. ONE OF THOSE THREE LEVELS, EITHER IN HOME SERVICES, COLLATERAL PLACEMENT OR FOSTER CARE REMOVAL.

Q. AND ONCE THAT ACTION WAS FILED, THEN WHAT HAPPENED?

A. THERE WOULD BE A HEARING. A TREATMENT PLAN WOULD BE FORMULATED. AND THAT TREATMENT PLAN WOULD CONTAIN SERVICES TO

**[DURBAN 79]**

BE OFFERED TO THE FAMILY THAT WERE DESIGNED TO CORRECT THE RISKS THAT HAD CAUSED THE INVOLVEMENT OF DSS. AGAIN WHATEVER THOSE RISKS MAY BE. THAT TREATMENT PLAN WOULD BE OFFERED TO THE PARENTS. THEY WOULD EITHER ACCEPT IT OR THEY WOULD REJECT IT. IF THEY REJECTED IT, DSS HAD THE OPPORTUNITY TO PROVE THE

NEED FOR THOSE SERVICES IN FRONT OF THE FAMILY COURT TO HAVE THAT TREATMENT PLAN MANDATED WITHOUT THE PARENTS' CONSENT. NORMALLY IN 95 PERCENT OF THE CASE THE PARENTS CONSENT TO THE ENTRY OF A TREATMENT PLAN, AND IT'S ADOPTED BY COURT ORDER SUBJECT TO PERIODIC REVIEW BY THE COURT.

Q. ARE THE PARENTS IN THAT SITUATION ACTUALLY SERVED THE DOCUMENT INITIATING THE LEGAL PROCEEDING?

A. YES, THEY ARE.

Q. ARE THEY GIVEN NOTICE OF THE LEGAL PROCEEDING?

A. YES, THEY ARE.

Q. ARE THEY GIVEN THE OPPORTUNITY TO HAVE COUNSEL IN THAT LEGAL PROCEEDING IF THEY SO DESIRE?

A. YES, SIR.

Q. IF PARENTS ARE NOT ABLE TO AFFORD THEIR OWN COUNSEL IS THERE A MECHANISM FOR COUNSEL TO BE APPOINTED FOR THEM?

A. YES. AND THEY'RE NOTIFIED WHEN THE ORIGINAL PAPERS ARE SERVED ON THEM OF THAT RIGHT TO HAVE COUNSEL APPOINTED TO REPRESENT THEM.

Q. IF AN ORDER IS ISSUED EITHER BY AGREEMENT OF THE PARTIES OR AFTER A HEARING THAT MANDATES SUBSTANCE ABUSE TREATMENT,

HOW WOULD THAT ORDER BECOME KNOWN TO THE PARENTS IN THE SITUATION THAT WE HAVE BEEN TALKING ABOUT?

A. THE PARENTS ARE IN THE COURTROOM WHEN THE ORAL ORDER IS ISSUED. AND THEN THE PARENTS ARE SERVED WITH A COPY OF THE WRITTEN ORDER ONCE IT'S BEEN SIGNED BY THE COURT.

Q. IF A SITUATION WERE TO ARISE WERE SUBSTANCE ABUSE TREATMENT HAD BEEN COURT-ORDERED IN THE MANNER THAT YOU HAVE DESCRIBED, EITHER BY AN AGREEMENT OR AFTER A HEARING, AND A PARENT FAILED TO COMPLY WITH THE COURT ORDER, WHAT RESOURCES WERE AVAILABLE THEN TO THE DEPARTMENT OF SOCIAL SERVICES TO PURSUE THE PARENTS' PARTICIPATION IN SUBSTANCE ABUSE TREATMENT?

A. WELL, AGAIN, THERE WERE TWO SIDES TO THE DECISION THAT HAD TO BE MADE. THE FIRST ONE WAS WHETHER THAT FAILURE INCREASED THE LEVEL OF RISK OF THE CHILDREN. IF THE FAILURE TO COMPLETE THE TREATMENT INCREASED THE LEVEL OF RISK TO THE CHILDREN SUCH THAT THE CHILDREN WERE AT RISK OF DEATH OR SERIOUS BODILY HARM IN THE HOME, DSS WOULD ATTEMPT TO REMOVE THE CHILDREN EITHER THROUGH LAW ENFORCEMENT INVOLVEMENT OR THROUGH A FAMILY COURT ORDER.

IF ON THE OTHER HAND THE RISK WAS NOT ENOUGH TO CHANGE THE TREATMENT PLAN TO CHANGE THE ENVIRONMENT OF THE CHILDREN, IF THE CHILDREN COULD STAY WHERE THEY WERE, BUT THE PARENT WAS STILL FLUNKING THE TREATMENT PLAN, AS IT WERE, DSS HAD THE REMEDY OF SEEKING TO BRING THEM BACK BEFORE THE FAMILY

**[DURBAN 81]**

COURT FOR CONTEMPT OF THAT FAMILY COURT ORDER FOR FAILING TO COMPLY WITH THE ORDER, AND THERE COULD BE AN ACTION BY THE COURT FOR THAT CONTEMPT INCLUDING UP TO A YEAR IN JAIL OR A FINE OR CERTAIN HOURS OF COMMUNITY SERVICE.

Q. MR. DURBAN, YOU HAVE DESCRIBED SOMETHING BUT YOU HAVE USED SOME TERMS OF ART IN THERE THAT PEOPLE FAMILIAR WITH THE LEGAL SYSTEM MIGHT UNDERSTAND BUT PEOPLE NOT FAMILIAR MIGHT NOT UNDERSTAND. CAN YOU TELL ME WHAT A RULE TO SHOW CAUSE HEARING WOULD BE?

A. YEAH. CONTEMPT OF COURT IS A WILLFUL VIOLATION OF A FAMILY COURT ORDER OR A COURT ORDER WITHOUT JUST CAUSE OR EXCUSE IS THE WAY THE LAW READS. A RULE TO SHOW CAUSE IS A DOCUMENT THAT IS SERVED ON SOMEONE NOTIFYING THEM THAT THEY

HAVE TO APPEAR BEFORE THE COURT AND SHOW A REASON WHY THEY SHOULD NOT BE HELD IN CONTEMPT FOR VIOLATING THE ORDER OF THE COURT. IT GIVES THEM AN OPPORTUNITY TO BE HEARD WHEN THEY HAVE, ON THE FACE OF IT, VIOLATED THE COURT ORDER. IT GIVES THEM A CHANCE TO SAY I HAD A REASON FOR VIOLATING THAT COURT ORDER, I DIDN'T KNOW ABOUT THE COURT ORDER OR I'M INCAPABLE OF COMPLYING WITH THE COURT ORDER. THERE ARE ANY NUMBER OF REASONS. OR I'M NOW IN COMPLIANCE. I REALIZE I WAS NOT AT THE TIME BUT NOW I AM. THERE ARE ANY NUMBER OF REASONS THAT SOMEONE COULD GIVE. THE RULE TO SHOW CAUSE IS A DOCUMENT TELLING THEM TO COME TO FAMILY COURT AND EXPLAIN WHY THEY VIOLATED THE ORDER.

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**[DURBAN 83]**

Q. CAN YOU GIVE US A SAMPLE OF THE CATEGORIES OF CHILD ABUSE THAT ARE DEALT WITH, THE GENERAL CATEGORIES?

A. WELL IT'S APPARENT I THINK ONE OF THE BIG MISCONCEPTIONS ABOUT SOCIAL SERVICES THAT IF YOU SPANK YOUR CHILD THE CHILD IS GOING TO BE TAKEN AWAY. THAT'S CERTAINLY NOT THE WAY PROTECTIVE SERVICES OPERATES. THERE IS EVER INCREASING WHAT

WE CALL THRESHOLD LIMIT TO EACH DETERMINATION THAT TAKES PLACE ALONG THE LINE.

THE FIRST THRESHOLD IS A REPORTING THRESHOLD. THERE ARE CERTAIN PROFILES IN SOUTH CAROLINA WHO ARE REQUIRED TO REPORT IF THEY SEE A REASON TO BELIEVE, AND THAT'S A VERY LOW THRESHOLD, IT DOESN'T SAY A GOOD REASON, IT DOESN'T SAY A COMPELLING REASON, IT DOESN'T SAY BEYOND A REASONABLE DOUBT, IT SAYS A REASON TO BELIEVE THAT A CHILD HAS BEEN ABUSED OR NEGLECTED.

THERE ARE CERTAIN PROFESSIONALS, THE MEDICAL COMMUNITY, THE THERAPEUTIC COMMUNITY THAT ARE REQUIRED TO REPORT. ONCE THEY HAVE REPORTED, THE DEPARTMENT OF SOCIAL SERVICES' INVESTIGATIVE THRESHOLD IS TO DETERMINE WHETHER IT IS MORE LIKELY THAN NOT, WHICH IS BASICALLY WHAT IS A CIVIL PREPONDERANCE OF THE EVIDENCE STANDARD. WHAT IS MORE LIKELY THAN THAT 51 PERCENT THAT THIS CHILD WAS ABUSED.

IF THE DSS WORKER DETERMINES THAT IT'S MORE LIKELY THAN NOT THAT THE CHILD WAS ABUSED, THEN YOU HAVE IS KNOWN AS AN INDICATED PROTECTIVE SERVICES CASE. THEN THAT MEANS THAT

DSS HAS THE RIGHT TO PROPOSE A TREATMENT PLAN AND TO SEEK MANDATORY ENFORCEMENT OF A PLAN IF THE PARENTS DON'T AGREE TO IT. AS PART OF THAT ANALYSIS THEY ALSO HAVE TO LOOK AT WHETHER OR NOT IT IS MORE LIKELY THAN NOT THAT THE CHILD IS AT THE SUBSTANTIAL RISK OF HARM THAT JUSTIFIES REMOVAL OF THE CHILD.

NOW THAT IS IF THE DSS INVESTIGATION PROCEEDS AS A DSS INVESTIGATION. THE OTHER WAY WE GET CHILDREN INTO PROTECTIVE CUSTODY IS THROUGH LAW ENFORCEMENT INVOLVEMENT. IF A LAW ENFORCEMENT OFFICER RESPONDS TO A POLICE CALL AND FINDS CHILDREN IN HARMS WAY, THE LAW ENFORCEMENT OFFICER, WITH NO PRIOR NOTICE TO SOCIAL SERVICES, CAN TAKE A CHILD INTO EMERGENCY PROTECTIVE CUSTODY MAKING THE SAME DETERMINATION THAT DSS WOULD MAKE. AND THAT IS THAT THE CHILD - THAT IT'S MORE LIKELY THAN NOT THAT THE CHILD IS AT RISK OF DEATH OR SERIOUS BODILY HARM.

IF A LAW ENFORCEMENT OFFICER DOES SO THEY THEN IMMEDIATELY NOTIFY DSS AND TURN THE CHILD OVER TO DSS FOR PROTECTIVE PLACEMENT UNTIL THERE IS A PRELIMINARY HEARING TO DETERMINE WHAT IS GOING TO HAPPEN UNTIL THE MATTER IS TRIED.

SO AT EACH OF THOSE STAGES THERE IS A THRESHOLD TO THE DETERMINATION. ONCE WE GET INTO COURT, IT'S UP TO A COURT TO DECIDE WHETHER IT IS MORE LIKELY THAN NOT, OR BY A PREPONDERANCE OF THE EVIDENCE, WHETHER OR NOT THE CHILD HAS BEEN SUBJECT TO ABUSE OR NEGLECT OR WHETHER OR NOT THE ABUSE

**[DURBAN 85]**

OR NEGLECT RISES TO THE LEVEL OF SUBSTANTIAL RISK THAT WOULD JUSTIFY A REMOVAL. IF WE DON'T MEET THAT THRESHOLD THE CASE IS OVER AND EVERYBODY GOES HOME INCLUDING THE CHILD.

SO AT EACH OF THOSE STAGES THERE IS AN OPPORTUNITY FOR A DECISION TO BE MADE BY SOMEONE CULMINATING IN A FAMILY COURT JUDGE HAVING TO EITHER CONFIRM EVERYTHING THAT HAS BEEN DONE AND SAY THAT EVERYTHING THAT WAS DONE WAS ACCORDING TO THE LAW, OR TO SAY THIS INTERVENTION DID NOT ARISE THROUGH SUFFICIENT EVIDENCE TO ALLOW DSS TO INTERVENE.

Q. BUT AT SOME POINT WOULD THE COURT NEED - WOULD THE COURT BE ASKED TO MAKE A FINDING? IF INTERVENTION IS THE ROUTE THAT THE DEPARTMENT OF SOCIAL SERVICES TOOK, WOULD THE COURT BE ASKED TO MAKE A FINDING AS TO WHAT KIND OF ABUSE THIS WAS OR

MIGHT HAVE?
A. YES.
Q. AND WHAT KIND OF FINDING IS THE COURT ASKED TO MAKE?
A. THE CHILDREN'S CODE, WHICH IS THE CHILD PROTECTION CODE IN SOUTH CAROLINA, DEFINES HARM TO A CHILD TO INCLUDE PHYSICAL ABUSE, SEXUAL ABUSE, NEGLECT. WHICH IS FAILURE TO PROVIDE THE CHILD WITH THE NECESSITIES OF LIFE. AND CONTRIBUTING TO THE DELINQUENCY OF THE CHILD IS ALSO BRANDED AS A TYPE OF CHILD ABUSE. THOSE ARE THE MAIN ONES. ALSO DSS CAN INTERVENE IN A CASE WHERE THERE IS A SUBSTANTIAL RISK OF PHYSICAL ABUSE, SEXUAL ABUSE, NEGLECT OR EXPLOITATION.
Q. WHAT WOULD BE THREAT OF HARM? WHAT WOULD A FINDING OF

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**[DURBAN 90]**

EVERY FACTOR INVOLVING THE ENVIRONMENT OF THE CHILDREN. SO THE ANSWER IS NO.
Q. DO YOU KNOW OF ANY PECULIAR OBLIGATION PLACED UPON WOMEN AS OPPOSED TO MEN BY THE CHILDREN'S CODE OF THE STATE OF SOUTH CAROLINA?
A. I DON'T UNDERSTAND YOUR QUESTION.
Q. DO THEY HAVE ANY PECULIAR RESPONSIBILITIES?

A. NOT THAT I'M AWARE OF, AS I UNDERSTAND YOUR QUESTION.
Q. AND IS THERE ANY PART OF THE CHILDREN'S CODE THAT ADDRESSES ITSELF ONLY TO WOMEN?
A. NOT THAT I'M AWARE OF.
Q. IS THERE ANY PART OF THE CHILDREN'S CODE THAT ADDRESSES ITSELF ONLY TO PREGNANT WOMEN?
A. NOT THAT I'M AWARE OF.
Q. EARLIER IN YOUR TESTIMONY YOU INDICATED THAT YOUR FIRST DIRECT INVOLVEMENT WITH THE POLICY, THE AGREEMENT THAT WE HAVE BEEN TALKING ABOUT TODAY, TOOK PLACE YOU BELIEVED IN THE EARLY PART OF 1990; IS THAT CORRECT?
A. EITHER LATE '89 OR EARLY '90.
Q. WHAT INITIATED YOUR INVOLVEMENT?
A. I WAS ASKED BY CHARLIE CONDON'S SECRETARY TO ATTEND A MEETING AT THE MEDICAL UNIVERSITY CONCERNING THE INTERAGENCY AGREEMENT ON COCAINE BABIES.
Q. AND DID YOU ATTEND THAT MEETING?
A. YES, I DID.

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**[DURBAN 92]**

C, D, E AND F FOR IDENTIFICATION SHOULD BE DEFENDANT'S 5 C, D, E AND F FOR IDENTIFICATION.
Q. (BY MS. DUNN, CONTINUING) MR. DURBAN, BEFORE I CONTINUE WITH THE QUESTIONS ABOUT THE JANUARY 1990 MEETING, LET ME ASK

YOU A QUESTION CONCERNING THE APPLICABILITY OF THE POLICY THAT WE HAVE BEEN DISCUSSING. TO THE BEST OF YOUR KNOWLEDGE, WHICH HOSPITALS IN CHARLESTON WERE INVOLVED IN THE WORKING AGREEMENT BETWEEN THE CITY OF CHARLESTON, THE SOLICITOR AND THE MEDICAL UNIVERSITY?

A. THE ONLY HOSPITAL THAT I WAS AWARE WAS THE MEDICAL UNIVERSITY AND ANY HOSPITALS THAT OPERATED UNDER THE AUSPICES OF THE MEDICAL UNIVERSITY.

Q. DID IT APPLY AT PRIVATE THEN? PRIVATE HOSPITALS?

A. NOT TO MY KNOWLEDGE.

Q. SO THAT IS A HOSPITAL OTHER THAN THE ONES THAT YOU JUST DESCRIBE?

A. YES.

Q. SAINT FRANCIS?

A. RIGHT.

Q. ROPER?

A. THAT'S CORRECT.

Q. EAST COOPER?

A. THAT'S CORRECT.

Q. YOU WERE DESCRIBING A MEETING THAT YOU WENT TO IN JANUARY OF 1990; IS THAT CORRECT?

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**[DURBAN 94]**

Q. DID YOU HAVE ANY IDEA WHEN YOU WENT TO THE MEETING WHO ACTUALLY CALLED THE MEETING?

A. NO, I DON'T.

Q. WERE ANY NOTES TAKEN OF THAT MEETING?
A. I TOOK NOTES OF THE MEETING.
Q. I'M GOING TO HAND YOU A BINDER THAT INCLUDES ALL OF THE JOINT EXHIBITS THAT ARE ALREADY IN EVIDENCE IN THIS CASE.
A. OKAY.
Q. MR. DURBAN, I CALL YOUR ATTENTION TO THE DOCUMENT MARKED JOINT EXHIBIT 3. DO YOU RECOGNIZE THAT DOCUMENT?
A. YES, I DO.
Q. CAN YOU TELL US WHAT THAT IS?
A. THIS IS A - AFTER I RETURNED FROM THAT MEETING IN JANUARY OF 1990, I TOOK THE NOTES THAT I HAD TAKEN AT THAT MEETING AND REDUCED THEM TO WRITING OR TYPED THEM ON A WORD PROCESSOR. AND THESE ARE - THIS IS THE DRAFT COPY OF THAT TYPED VERSION OF MY NOTES.
Q. TO THE BEST OF YOUR KNOWLEDGE, WAS THERE ANY OTHER VERSION THAT WAS EVER PRODUCED?
A. NOT THAT I'M AWARE OF, NO.
Q. AND DOES THIS DOCUMENT ACCURATELY REFLECT WHAT WENT ON IN THAT MEETING?
A. TO THE BEST OF MY NOTE TAKING ABILITIES, YES.
Q. THIS DOCUMENT INDICATES THAT THE - AT THAT MEETING A DECISION WAS MADE TO MAKE SOME MODIFICATION IN HOW THIS

WORKING ARRANGEMENT WORKED; IS THAT CORRECT?
A. IF I COULD REVIEW IT. IT INDICATES - THESE NOTES INDICATE THAT THERE WAS A - THERE WERE SUGGESTIONS TO MODIFY THE WAY THE POLICY WAS BEING IMPLEMENTED, YES.
Q. WHAT WAS THAT MODIFICATION?
A. THERE WAS A SUGGESTION AT FIRST THAT IF A PREGNANT FEMALE WERE TO TEST POSITIVE FOR COCAINE DURING A PRENATAL VISIT, AND IT OUTLINES WHAT THE INTERVENTION WOULD BE. THAT WOULD BE PRESENTATION OF A FILM, EXECUTING THE SOLICITOR'S LETTER INDICATING THAT IF THEY WENT INTO TREATMENT THEY WOULD NOT BE PROSECUTED. THE SECOND SUGGESTION -
Q. I'M SORRY. DID THAT PORTION, TO THE BEST OF YOUR RECOLLECTION, REFLECT ANY CHANGE? ANY MODIFICATION?
A. I DON'T BELIEVE THAT IT DID, NO.
Q. ALL RIGHT. YOU MAY CONTINUE.
A. OKAY. THE SECOND SUGGESTION WAS MADE IF A PREGNANT FEMALE TESTED POSITIVE FOLLOWING AN ADMISSION FOR LABOR, AND IT OUTLINES THE STEPS THAT WOULD BE TAKEN INCLUDING THE - REPORT BEING MADE TO DEPARTMENT OF SOCIAL SERVICES AND ASSESSMENT TO BE CONDUCTED BY THE DEPARTMENT OF SOCIAL SERVICES.
THE LETTER OF AGREEMENT, WHICH WAS SIMILAR TO THE

LETTER, THIS WAS EXECUTED BY MOTHERS WHO CAME IN FOR PRENATAL CARE. AND WAS TO BE EXECUTED. AND THE SUGGESTION WAS FOR DSS PERSONNEL TO UNDERTAKE THAT. ATTEMPT AT RELATIVE PLACEMENT.

**[DURBAN 96]**

PLACING THE CHILD OTHER THAN WITH THE ADDICTED MOTHER WHILE THE MOTHER UNDERWENT TREATMENT.

THE THIRD SUGGESTION WAS THAT FAILURE BY THE MOTHER, AND THIS IS AFTER A LABOR ADMISSION, TO EITHER EXECUTE THE LETTER OF AGREEMENT OR COMPLETE THE COUNSELING OR COOPERATE WITH DSS ON FINDING ALTERNATIVE PLACEMENT WOULD RESULT IN CRIMINAL PROSECUTION CONSISTENT WITH THE ORIGINAL POLICY.

Q. SO, CALLING YOUR ATTENTION TO SUBSECTION 2 OF THAT DOCUMENT, IN WHAT WAYS DO YOU RECALL THAT THAT WAS A MODIFICATION?

A. I WAS NOT AWARE OF HOW THE POLICY WAS OPERATING WHEN I WENT TO THIS MEETING. THESE WERE THE SUGGESTIONS THAT WERE MADE. IT WAS MY UNDERSTANDING FROM THE INTERACTION AT THIS MEETING, AND THIS WAS KIND OF A BRAINSTORMING SESSION TO SEE HOW EVERYTHING WAS GOING, IT WAS MY UNDERSTANDING THAT PREVIOUSLY THERE HAD NOT BEEN THE OPPORTUNITY TO AVOID

PROSECUTION THROUGH AGREEING TO AND UNDERGOING TREATMENT IF A MOTHER CAME IN AND TESTED POSITIVE FOR COCAINE DURING A LABOR ADMISSION AS OPPOSED TO COMING IN FOR PRENATAL CARE.

Q. SO WHAT HAD HAPPENED IF THE MOTHER TESTED POSITIVE WHEN SHE ARRIVED FOR LABOR AND DELIVERY?

A. I BELIEVE A REPORT WAS MADE TO LAW ENFORCEMENT. AND IF LAW ENFORCEMENT DECIDED TO PROSECUTE, THEY WOULD ARREST.

Q. IN THE PORTION THAT YOU JUST READ THERE IS A REFERENCE TO A LETTER OF AN AGREEMENT. CAN YOU TELL US WHAT A LETTER OF

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**[DURBAN 98]**

ALSO BEFORE YOU. HAVE YOU EVER SEEN THAT DOCUMENT BEFORE?

A. YES. THIS APPEARS TO BE THE LETTER THAT WAS DRAFTED IN RESPONSE TO THAT MODIFICATION OF THE POLICY. IT WAS A LETTER OF AGREEMENT OF THIS ONE IS DATED MARCH 26, 1990. AND JOINT EXHIBIT 5 WHICH REFERS TO TESTING POSITIVE DURING PRENATAL CARE IS DATED OCTOBER OF 1989. SO THE SECOND LETTER JOINT EXHIBIT NUMBER 6 REFERS TO A WOMEN WHO HAD TESTED POSITIVE IN CONNECTION WITH THE BIRTH OF A CHILD. SO THAT WOULD BE THE RESPONSE LETTER IN THE SECOND SITUATION WHERE A WOMEN TESTED

POSITIVE DURING DELIVERY.
Q. LET ME TAKE YOU BACK TO JOINT EXHIBIT NUMBER 3 AGAIN, WHICH IS THE MEMO THAT YOU HAD BEEN TESTIFYING ABOUT BEFORE. IS THAT THE COMPLETE DOCUMENT THAT YOU PREPARED IN JANUARY OF 1990?
A. TO THE BEST OF MY KNOWLEDGE CONTAINS KIND OF A DISCLAIMER AT THE VERY END OF PAGE TWO SAYING ANYBODY THAT WANTED TO MODIFY IT SHOULD GET IN TOUCH WITH ME. SO I THINK THAT'S THE END OF IT.
Q. I'M HANDING YOU A DOCUMENT THAT HAS BEEN PREMARKED PLAINTIFF'S EXHIBIT NUMBER 31. MR. DURBAN. I'M HANDING YOU A DOCUMENT THAT IS MARKED PLAINTIFF'S 31. DO YOU RECOGNIZE THIS DOCUMENT.
A. I DON'T RECALL THIS DOCUMENT, NO. ALTHOUGH IT DOES APPEAR TO BE TYPED ON MY WORD PROCESSOR, SO I MAY HAVE MADE -
Q. SO YOU THINK YOU MAY HAVE WRITTEN THIS?

* * *

**[DURBAN 100]**

ABUSE, I DO THINK IT'S RELEVANT THAT THE DEPARTMENT OF SOCIAL SERVICES -
THE COURT: I DON'T THINK IT IS. I SUSTAIN THE OBJECTION. DISREGARD THAT, LADIES AND GENTLEMEN.

Q. (BY MS. DUNN, CONTINUING) MR. DURBAN, DID YOU DISSEMINATE THE DOCUMENT THAT YOU HAD ALREADY REFERRED TO AS IN JOINT EXHIBIT NUMBER 3 WHICH IS THE MEMO THAT YOU WROTE?

A. I KNOW I GAVE IT TO CHARLIE CONDON. I BELIEVE I ALSO SENT A COPY OF IT TO THE MEDICAL UNIVERSITY GENERAL COUNSEL, MR. GOOD. AND I SENT A COPY OF IT TO MY CLIENT THE DEPARTMENT OF SOCIAL SERVICES. AS TO WHETHER OR NOT IT GOT TO SUBSTANCE ABUSE I DON'T RECALL.

Q. MR. DURBAN, DO YOU RECALL WHETHER OR NOT THERE WERE ANY CHANGES IN THE UNDERLYING CHILDREN'S CODE INSOFAR AS IT DEALT WITH THE ABUSE OF CHILDREN BETWEEN OCTOBER 1990 AND JANUARY OF 1990?

A. OCTOBER OF '89?

Q. '89. '89, YES.

A. NOT THAT I'M AWARE OF.

Q. MR. DURBAN, COULD I HAVE YOU LOOK AGAIN AT THE JOINT EXHIBIT 5 AND JOINT EXHIBIT 6.

A. YES.

Q. THESE ARE THE DOCUMENTS THAT YOU HAD DESCRIBED IN YOUR MEMO AND IN YOUR TESTIMONY AS A LETTER OF AGREEMENT; IS THAT CORRECT?

**[DURBAN 101]**

A. THAT'S CORRECT.

Q. HOW ARE THESE DOCUMENT LETTERS OF AGREEMENT?
A. WELL THAT WAS JUST A NAME THAT WAS DISCUSSED. IT WAS AN AGREEMENT BY THE SOLICITOR AS THE CHIEF LAW ENFORCEMENT OFFICER IN CHARLESTON COUNTY NOT TO PROSECUTE, TO IN ESSENCE WAIVE PROSECUTION TO SOMEONE WHO WOULD GO INTO TREATMENT. IT'S A LETTER FROM THE SOLICITOR AGREEING THAT HE WOULD NOT PROSECUTE IF THEY WENT INTO TREATMENT.
Q. IT'S NOT LETTER OF A PATIENT AGREEING TO ANYTHING, IS IT?
A. NO. NO. IN FACT THEIR SIGNATURE ON THESE DOCUMENTS WAS ONLY TO ACKNOWLEDGE THAT THEY HAD RECEIVED IT.
Q. MR. DURBAN, DID YOU HAVE ANY FURTHER ROLE IN THE MODIFICATION OR THE IMPLEMENTATION OF A POLICY INVOLVING THE MEDICAL UNIVERSITY, THE CITY OF CHARLESTON AND SOLICITOR'S OFFICE?
A. I AGREED AS A REPRESENTATIVE OF THE SOLICITOR'S OFFICE - YOU KNOW, AT THAT POINT - AT THIS POINT IN MY POSITION I'M AN EMPLOYEE OF THE STATE AS IN-HOUSE COUNSEL MORE OR LESS FOR DSS. AT THAT TIME I WAS AN EMPLOYEE OF THE SOLICITOR'S OFFICE AND WE REPRESENTED DSS, SO DSS WAS MY CLIENT. I AGREED ON BEHALF OF THE SOLICITOR'S OFFICE TO DISCUSS THIS PROPOSED

MODIFICATION WITH THE DEPARTMENT OF SOCIAL SERVICES. AND SCHEDULED A MEETING WITH THE ADMINISTRATION OF CHARLESTON COUNTY DSS TO DISCUSS WITH THEM WHAT HAD HAPPENED AT THIS MEETING AT THE MEDICAL UNIVERSITY.

**[DURBAN 102]**

THE ONLY OTHER DEALING THAT I HAD WITH IT, I WAS RESPONSIBLE FOR PRESENTING THE CASES OF ANY COCAINE BABIES IN CHARLESTON COUNTY TO THE FAMILY COURT, WHETHER THEY CAME FROM THE MEDICAL UNIVERSITY OR ANYWHERE ELSE. AND I WROTE A SPEECH THAT SOLICITOR CONDON DELIVERED AT A CONFERENCE I BELIEVE AT THE NATIONAL DISTRICT ATTORNEYS' ASSOCIATION SOMETIME IN 1990 OR '91.

Q. MR. DURBAN, PRIOR TO OCTOBER 1989, IF THE DEPARTMENT OF SOCIAL SERVICES HAD RECEIVED A REPORT FROM THE MEDICAL UNIVERSITY OR ANY OTHER HOSPITAL THAT A MOTHER HAD TESTED POSITIVE FOR COCAINE AT THE TIME OF THE BIRTH OF HER CHILD, WHAT WOULD HAVE HAPPENED?

A. DSS WOULD HAVE INVESTIGATED THAT REPORT TO DETERMINE IF THERE WAS SUFFICIENT RISK TO INTERVENE IN THE FAMILY.

Q. WOULD THAT REPORT IN AND OF ITSELF HAVE RESULTED IN THE

REMOVAL OF THE CHILD FROM THE MOTHER'S CUSTODY?
A. I CAN'T ANSWER THAT FOR ANYBODY EXCEPT DSS. DSS DOES NOT HAVE THE AUTHORITY IN SOUTH CAROLINA TO REMOVE A CHILD FROM PARENTS' CUSTODY. ONLY A FAMILY COURT JUDGE OR LAW ENFORCEMENT OFFICER CAN DO THAT.
Q. DID THE DEPARTMENT OF SOCIAL SERVICES CIRCUMSTANCES IN RELATIONSHIP TO CHILDREN WHO HAD BEEN BORN WHO TESTED POSITIVE FOR COCAINE AT THE TIME OF THEIR BIRTH, CHANGE FOR PATIENTS AT THE MEDICAL UNIVERSITY AFTER THE INITIATION OF THIS POLICY?
A. NO.

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**[DURBAN 108]**

A. YES. I DID SOME BACKGROUND RESEARCH OF MY OWN AND I ALSO HAD AT LEAST ONE MEETING WITH SOLICITOR OF THE CITY OF CHARLESTON, CHARLIE CONDON. HE WANTED ME TO BE THE SOLICITOR'S REPRESENTATIVE FOR THE FAMILY COURT ASPECT OF THE INTERVENTION IN THIS POLICY. AND HE ADVISED ME OF THE ORIGIN AND THE HISTORY OF THE PROGRAM.
Q. AND WHAT WAS YOUR UNDERSTANDING OF THE ORIGIN AND HISTORY OF THE PROGRAM?
THE COURT: I SUSTAIN THE OBJECTION. I THINK THAT

HIM NOT BEING INVOLVED IN THE DEVELOPMENT AND NOT BEING ONE OF THE PEOPLE THAT MADE THE DECISION, HE OF COURSE CAN'T TESTIFY AS TO WHY HE DID WHAT HE DID. AND SO NOW WHAT HE IS TESTIFYING TO OR BEING ASKED TO TESTIFY TO IS WHY OTHER PEOPLE DID WHAT THEY DID. AND THE ONLY WAY THAT HE CAN DO IS THROUGH WHAT THEY HAVE TOLD HIM. NOW IT'S OBVIOUS THAT HE IS GETTING READY TO SAY WHAT MR. CONDON TOLD HIM, AND THAT'S HEARSAY, BECAUSE IT'S OBVIOUSLY OFFERED FOR THE TRUTH OF THE MATTER.

MS. SHOWERS: THANK YOU, YOUR HONOR.

Q. (BY MS. SHOWERS, CONTINUING) AFTER THE JANUARY 1990 MEETING, DID YOU DEVELOP AN UNDERSTANDING OF THE GOAL OF THIS POLICY?

A. YES.

Q. HOW WOULD YOU CHARACTERIZE THE GOAL OF THIS POLICY?

A. TO - I BELIEVE THE BEST WAY TO CHARACTERIZE IT IS THE CARROT AND THE STICK APPROACH. THE CARROT BEING THE

**[DURBAN 109]**

OPPORTUNITY FOR TREATMENT. THE STICK BEING THE THREAT OF CRIMINAL PROSECUTION IF THEY DID NOT UNDERGO TREATMENT.

Q. AND THE POLICY WAS MEDICALLY DRIVEN WAS IT NOT?

A. YES.
Q. THERE WAS NO ONE IN THE SOLICITOR'S OFFICE THAT STAYED AT MUSC AND TOLD THEM WHO TO TEST FOR DRUGS DID THEY?
MS. DUNN: OBJECTION, YOUR HONOR, I THINK SHE IS GOING BACK INTO IT.
THE COURT: OVERRULED. GO AHEAD.
A. NO, THE MEDICAL UNIVERSITY ESTABLISHED THE CRITERIA FOR INTERVENTION.
Q. AND THERE WAS NO ONE FROM THE SOLICITOR'S OFFICE ANYWHERE AT MUSC TELLING ANYONE TO DO A DRUG TEST, WAS THERE?
A. NO.
Q. AND IF A TEST WAS POSITIVE PRENATALLY ON A WOMAN AND IT WAS REPORTED TO DSS, DSS COULDN'T INTERVENE AND TAKE CUSTODY OF THAT CHILD COULD THEY?
A. IF THE REPORT WAS MADE TO DSS?
Q. YES, SIR.
A. DSS COULD INTERVENE. AND IF THEY FELT THAT THE CHILD WAS AT SUBSTANTIAL RISK, THEY COULD ASK THE FAMILY COURT TO REMOVE THE CHILD, YES. OR LAW ENFORCEMENT.
Q. MY QUESTION WAS A PRENATAL POSITIVE TEST?
A. NO. NO. I'M SORRY. I THOUGHT THAT YOU WERE TALKING AFTER DELIVERY.

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UNDER THIS STATUTE FOR NOT REPORTING CHILD ABUSE?
A. THERE IS A CRIMINAL PENALTY. AND ACCORDING TO THE STATUTE THAT YOU HAVE COPIES, IS A FINE OF UP TO FIVE HUNDRED DOLLARS OR IMPRISONMENT FOR SIX MONTHS.
Q. AND THEY MUST REPORT TO AVOID THAT FINE AND IMPRISONMENT, CORRECT?
A. THE POSSIBILITY OF THAT FINE AND IMPRISONMENT.
Q. THANK YOU.
YOU WERE ASKED BY REPRESENTATIVES OF THE SOLICITOR'S OFFICE TO RESEARCH THE CHILD ABUSE LAW AND ITS APPLICABILITY TO THE PREGNANT WOMEN; IS THAT TRUE?
A. THAT'S CORRECT.
Q. WOULD YOU TELL THE JURY WHAT YOU CONCLUDED?
MS. DUNN: OBJECTION, YOUR HONOR.
MS. SHOWERS: IT GOES TO THE REASONABLE BASIS.
THE COURT: NO, IT DOESN'T. NOT - NOT WITH THE LIMITED FOUNDATION THAT YOU LAID FOR IT. I CAN'T - IT MAY GO TO THAT, BUT YOU CERTAINLY CAN'T DETERMINE THAT BASED ON WHAT YOU ASKED HIM. YOU JUST ASK HIM IF HE RESEARCHED IT, PERIOD. AND WE DON'T KNOW WHEN HE RESEARCHED IT, WE DON'T KNOW THE PURPOSE OF THAT, WE DON'T KNOW WHO GOT THE BENEFIT OF IT, YOU KNOW. SO I SUSTAIN THE OBJECTION.

Q. (BY MS. SHOWERS, CONTINUING) MR. DURBAN, WERE YOU EVER ASKED TO RESEARCH THE CHILD ABUSE STATUTE?
A. THE CHILD ABUSE STATUTE AND THE LAW OF - THE DEFINITION

**[DURBAN 116]**

OF A CHILD OR PERSON.
Q. WHO ASKED YOU TO DO THAT?
A. SOLICITOR CHARLIE CONDON.
Q. AND WHEN DID HE ASK YOU TO DO THAT?
A. IT WAS AFTER THIS MEETING IN JANUARY OF 1990.
Q. AND WHAT DID YOU CONCLUDE?
MS. DUNN: OBJECTION, YOUR HONOR.
THE COURT: I SUSTAIN THE OBJECTION. I DON'T KNOW HOW THAT COULD BE RELEVANT AT THIS POINT IN TIME. I'LL BE GLAD TO LOOK AT HIS OPINION. OBVIOUSLY THAT WOULD BE THE BEST EVIDENCE. AND SEE WHAT IT SAYS. BUT, YOU KNOW, I DON'T KNOW WHAT IT WOULD BE RELEVANT TO. IF WE'RE TALKING ABOUT THE DEFENSE OF QUALIFIED IMMUNITY, THEN OF COURSE IT'S FOR ME TO DETERMINE WHAT THE ESTABLISHED LAW IS, NOT HIM.
MS. SHOWERS: THE REASONABLE BASIS FOR WHAT THEY WERE DOING, THOUGH, AS SOLICITORS.
THE COURT: I THINK THEY ARE PRESUMED TO KNOW THE

LAW. I DON'T KNOW THAT SOMEONE - I MEAN, WHEN I TELL THE JURY WHAT THE LAW IS, I'M GOING TO. I MEAN, YOU KNOW.

MS. SHOWERS: IT ALSO WOULD GO TO WHAT THE SOLICITORS WERE TELLING REPRESENTATIVES OF MUSC FOR WHAT WAS BEING DONE.

THE COURT: WE DON'T KNOW THAT HE DID.

MS. SHOWERS: THAT THIS WITNESS DID.

THE COURT: WE DON'T KNOW THAT MR. CONDON DID. NOW

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**[DURBAN 126]**

SO I LIKE TO DO IT IN FRONT OF YOU SO YOU CAN SEE THAT INTERPLAY AND UNDERSTAND WHAT WE'RE DOING THAT NOBODY IS TRYING TO OBSTRUCT THE INTRODUCTION OF EVIDENCE BUT WE'RE TRYING TO SEE WHAT IS ADMISSIBLE UNDER OUR RULES OF EVIDENCE SO YOU WON'T HAVE TO CONTEND WITH ANYTHING THAT IS NOT ADMISSIBLE. AND IT TAKES A LITTLE TIME, AND I APOLOGIZE FOR THAT TIME, BUT I BELIEVE THAT TIME IS WORTH IT AND IT HELPS US TRY TO THE CASE THE WAY OUR RULES REQUIRE IT BE TRIED. AND I THINK THAT'S THE BEST WAY AND THAT WAY YOU DON'T HAVE TO WORRY ABOUT EVIDENCE THAT IS NOT ADMISSIBLE AND SHOULD NOT BE

CONSIDERED BY YOU.
Q. (BY MS. SHOWERS, CONTINUING) MR. DURBAN, YOU WENT THROUGH THIS CHILD ABUSE AND NEGLECT STATUTE?
THE COURT: I'M GOING TO LET YOU READ IT AND YOU CAN PUBLISH IT IF YOU LIKE.
Q. (BY MS. SHOWERS, CONTINUING) I ONLY HAVE ONE QUESTION.
IN YOUR ROLE AS SOLICITOR UNDER THE CHILD ABUSE STATUTE ANY WOMEN WHO TESTED POSITIVE FOR COCAINE WAS COMMITTING A CRIME, WAS SHE NOT?
A. I'M SORRY, YOUR QUESTION AGAIN WAS?
Q. ANY WOMEN WHO WAS TAKING COCAINE AND WAS PREGNANT WAS COMMITTING A CRIME UNDER THAT STATUTE, CORRECT?
A. MY UNDERSTANDING, ANY WOMEN WHO TESTED POSITIVE FOR COCAINE COULD BE ARRESTED AND CHARGED WITH A CRIME.
Q. SHE COULD HAVE BEEN ARRESTED IMMEDIATELY?

**[DURBAN 127]**

A. YES.
Q. NO ONE HAD TO OFFER THIS WOMEN AMNESTY, DID THEY?
A. NO.
Q. BUT IN FACT THIS POLICY, WHAT HAS BEEN COME TO KNOWN AS THE INTERAGENCY POLICY, DID OFFER AMNESTY DIDN'T IT?
A. YES, IT DID.

Q. AND IT OFFERED TWO KINDS OF AMNESTY, BOTH BEFORE ARREST AND AFTER ARREST. COULD YOU EXPLAIN HOW THAT WORKED TO THE JURY.

A. I'M NOT SURE I UNDERSTAND THE AFTER ARREST PART, SO I CAN'T REALLY ADDRESS THAT. BEFORE ARREST A WOMAN WAS OFFERED THE OPPORTUNITY TO UNDERGO SUBSTANCE ABUSE TREATMENT AND TO REMAIN DRUG FREE. AND IF THEY DID SO THEY WOULD NOT BE ARRESTED, THEY WOULD NOT BE PROSECUTED. NOW I'M NOT AWARE OF WHAT HAPPENED SUBSEQUENT TO THE ARREST.

Q. ALL RIGHT. AND YOU IN YOUR ROLE WITH DSS KEPT FILES ON REPORTS OF CRIME OR SUSPECTED ABUSE, CORRECT?

A. WE KEPT FILES ON SUSPECTED ABUSE, YES.

Q. AND AS PART OF THE SOLICITOR'S OFFICE, THE SOLICITOR'S OFFICE HAD ACCESS TO THOSE SAME FILES?

A. THOSE WERE SOLICITOR'S FILES, YES.

Q. ALSO IN YOUR ROLE WITH THE SOLICITOR'S OFFICE, DID YOU BECOME FAMILIAR WITH A SCAN MEETING

A. YES. SCAN WAS THE SUSPECTED CHILD ABUSE OR NEGLECT COMMITTEE. AND I WAS FAMILIAR WITH THEM, YES.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

**EXCERPTS FROM TESTIMONY OF JAMES EDWARDS**

**[EDWARDS 571]**

SURGEON, YOU HAVE BEEN INVOLVED IN POLITICS, HAVEN'T YOU?
A. YES, I HAVE.
Q. YOU HELD WHAT POLITICAL OFFICE?
A. I WAS A STATE SENATOR FROM 1972 TO '74. RAN FOR GOVERNOR IN 1974 AND WAS ELECTED TO THE GOVERNORSHIP IN '74. AT THAT TIME YOU COULD ONLY SERVE ONE YEAR - ONE TERM UNDER THE CONSTITUTION. I SERVED FOUR YEARS AND LEFT THE GOVERNOR'S OFFICE IN 1979. AND CAME BACK AND PRACTED IN MY ORAL SURGERY PRACTICE FOR TWO YEARS. AND THEN WAS REQUESTED BY PRESIDENT RONALD REGAN TO BE A MEMBER OF HIS CABINET. I BECAME HIS SECRETARY OF ENERGY FOR THE FIRST TWO YEARS OF HIS ADMINISTRATION, AND RETURNED HOME AFTER SERVING TWO YEARS UP THERE AND BECAME PRESIDENT OF THE MEDICAL UNIVERSITY IN 1982.
Q. AND HAVE YOU CONTINUED IN THAT CAPACITY SINCE 1982?
A. YES, SIR, I HAVE.
Q. DR. EDWARDS, I WOULD LIKE FOR YOU TO TELL THE JURY THE

SEQUENCE OF EVENTS LEADING UP TO THE APPROVAL AND IMPLEMENTATION OF THE INTERAGENCY POLICY WHICH IS THE SUBJECT OF THIS LAWSUIT.

A. TO THE BEST OF MY KNOWLEDGE AND MY MEMORY, ALL OF THIS STARTED WITH OUR PEDIATRIC DEPARTMENT. AND THEN OUR NEONATAL INTENSIVE CARE UNIT, THE PEOPLE IN THE NEONATAL INTENSIVE CARE UNIT WERE QUITE SENSITIVE TO THE PROBLEMS THEY HAD THERE WITH THESE PREMATURE BIRTHS AND NEWBORNS THAT WERE NOT FULLY DEVELOPED. AND IF ANY OF YOU COULD SEE ANY OF THESE LITTLE

**[EDWARDS 572]**

TWO-POUND BABIES THAT YOU COULD HOLD IN THE PALM OF YOUR HAND AND SEE THE PROBLEMS THEY HAD, YOU COULD UNDERSTAND WHY THEY WERE SO CONCERNED.

AND SO WE REALIZED THAT WE WERE GETTING A LOT OF THESE EARLY BIRTH DEFECTS AND PREMATURE DELIVERIES AND SMALL BABIES BECAUSE OF THE CRACK COCAINE PROBLEM. AND SO THEY DECIDED TO DO SOMETHING ABOUT IT. AND I THINK THAT'S HOW IT ALL ORIGINATED.

AND THEN THEY ALSO GOT INVOLVED WITH THE SOLICITOR. I DON'T KNOW WHICH ONE CAME FIRST. I DON'T REMEMBER THE

DETAILS OF WHICH ONE CAME FIRST, BUT THE SOLICITOR AND THE POLICE DEPARTMENT. I THINK THE DEPARTMENT OF SOCIAL SERVICES BECAME INVOLVED. AND THEN THE SUBSTANCE ABUSE PEOPLE. THEY REQUESTED THEIR HELP TO TRY TO CREATE SOME SORT OF A POLICY THAT WOULD HELP PREVENT THIS FROM HAPPENING IN YEARS TO COME.

WE ALSO FOUND THAT THESE CHILDREN, EACH ONE OF THESE CHILDREN COST ABOUT -

MR. WHERRY: OBJECTION.

THE COURT: HE HAS OBJECTED TO DR. EDWARDS TESTIFYING AS TO THAT. I THINK UNLESS A FOUNDATION CAN BE PROPERLY LAID INDICATING THAT THIS WITNESS HAS SOMETHING TO DO WITH THE FORMATION OF THE INTERAGENCY POLICY AND RELIED ON THAT INFORMATION IN DOING IT, WHICH IS THE WAY YOU CAN GET AROUND THE HEARSAY RULE, OR HE SHOWS PERSONAL KNOWLEDGE, AND THAT THAT - BASED ON THAT PERSONAL KNOWLEDGE HE HAS RELIED

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**[EDWARDS 575]**

MR. HOOD: TO LAY THE FOUNDATION.

THE COURT: WELL, NO, I DON'T KNOW THAT YOU LAY THE FOUNDATION THAT WAY. YOU MERELY LEAD THE WITNESS INTO

TESTIFYING A CERTAIN WAY. WHETHER YOU DO IT BY ASKING HIM IS IT SUCH AND SUCH AN AMOUNT, THE APPROPRIATE AMOUNT, OR YOU READ A PUBLICATION AND SAY THE PUBLICATION SAID THAT, IN EITHER EVENT YOU'RE LEADING HIM. AND THIS JURY IS ENTITLED TO KNOW WHAT TESTIMONY HE IS GIVING BASED UPON HIS MEMORY AND HIS RECOLLECTION AND NOT BASED UPON A QUESTION THAT YOU ASKED THAT SUGGESTED AN ANSWER.

SO I SUSTAIN THE OBJECTION. AND IF YOU DON'T PUT IT IN THE RIGHT CONTEXT AND DO IT RIGHT, THEN WE'RE GOING ON TO SOMETHING ELSE.

MR. HOOD: OKAY.

Q. (BY MR. HOOD, CONTINUING) WOULD YOU PLEASE TELL US, DON'T GIVE US THE NUMBER, WHAT THE FACTORS WERE, FROM YOUR PERSPECTIVE, OF THE MEDICAL UNIVERSITY FOR THIS POLICY?

A. WELL, THE EXPENSE OF THE CARE OF THESE BABIES WAS ONE OF THE FACTORS THAT I TOOK INTO CONSIDERATION WHEN WE WERE TALKING ABOUT THE DEVELOPMENT OF THIS POLICY.

Q. ALL RIGHT, SIR.

A. HUGE EXPENSES. BOTH WHILE THAT BABY WAS IN OUR HOSPITAL, AND BEFORE THAT BABY WENT HOME. AND IT'S A TERRIBLY EXPENSIVE THING TO MAINTAIN ONE OF THESE BABIES IN A REALLY - YOU'RE

REALLY CREATING A NEW UTERUS FOR THAT BABY TO LIVE IN UNTIL

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**[EDWARDS 578]**

TALKING ABOUT COSTS. BUT MR. HOOD IS CORRECT, HE DID ASK HIM TO LIST THE FACTORS THAT HE TOOK INTO CONSIDERATION. I OVERRULE THAT.

Q. (BY MR. HOOD, CONTINUING) DR. EDWARDS, YOU WERE IN THE MIDDLE OF A SENTENCE. WOULD YOU GO AHEAD AND CONTINUE THE FACTORS THAT WERE IMPORTANT TO YOU IN ALLOWING THIS?

THE COURT: I WOULD NOTE THAT THE ILLUSTRATIONS ARE SOMEWHAT ARGUMENTATIVE, AND I WOULD ASK THE WITNESS TO TESTIFY TO HIS KNOWLEDGE ALONE.

MR. HOOD: OKAY. GO AHEAD.

THE WITNESS: WHERE WAS I?

THE COURT: YOU MENTIONED THAT THE MONETARY AND THEN YOU MENTIONED THE INTEREST IN THE UNBORN FETUS, THE CHILDREN, AND SO LET'S CONTINUE FROM THERE.

A. THE HUMAN TRAGEDY WAS MUCH MORE IMPORTANT EVEN THAN THE MONETARY. AND THE MONETARY IS ASTRONOMICAL. BUT, YOU KNOW, I JUST FELT LIKE WE WERE DEFENDING THESE LITTLE UNBORN BABIES AND SOMEBODY NEEDS TO REPRESENT THEM. OH, THIS MAY NOT BE THE PERFECT POLICY, I DON'T KNOW. BUT IT'S AS PERFECT A POLICY AS

WE COULD GET. AND IT'S NOT A POLICY THAT DISCRIMINATES AGAINST ANYONE.

MR. WHERRY: I OBJECT.

A. IT'S NOT A POLICY THAT LEADS PEOPLE TO BE PUT IN JAIL.

THE COURT: I SUSTAIN THE OBJECTION. THE ANSWER IS NOT RESPONSIVE TO THE QUESTION. GO AHEAD AND RESTATE THE

**[EDWARDS 579]**

QUESTION.

Q. (BY MR. HOOD, CONTINUING) DOCTOR EDWARDS, WERE THERE ANY DEPARTURES FROM THE NORMAL PROCEDURE AND SEQUENCE OF EVENTS FOR ADOPTING A POLICY AT THE MEDICAL UNIVERSITY IN THE ADOPTION OF THIS POLICY?

A. NO, SIR. NO.

Q. HAS THE MEDICAL UNIVERSITY, AND SINCE YOU HAVE BEEN THE PRESIDENT OF IT SINCE 1982, ALWAYS COMPLIED WITH MANDATORY REPORTING PURSUANT TO CHILD ABUSE STATUTES?

A. TO THE BEST OF MY KNOWLEDGE, YES.

Q. IS THE POLICY OF THIS INTERAGENCY POLICY CONSISTENT WITH THE MEDICAL UNIVERSITY NORMS AND STANDARDS AND PHILOSOPHY?

A. YES.

Q. WHAT IS THE GOAL OF THIS POLICY? WHAT IS HOPED TO BE ACHIEVED BY AND WHAT WAS HOPED TO BE ACHIEVED BY THIS POLICY?

A. TO PROTECT THESE INNOCENT UNBORN CHILDREN WAS THE GOAL OF THIS POLICY.
Q. WAS THERE ANY INTENTION TO DISCRIMINATE AGAINST BLACKS BY THE ADOPTION OF THIS POLICY?
A. NONE WHATSOEVER. AND I WOULD NOT BE PART OF AN INSTITUTION THAT DID.
MR. HOOD: THOSE ARE ALL OF THE QUESTIONS THAT I HAVE.
THE COURT: CROSS-EXAMINATION.
CROSS-EXAMINATION

* * *

**[EDWARDS 583]**

CRACK COCAINE.
Q. WHAT IS YOUR AUTHORITY FOR THAT, DOCTOR? DID YOU DO ANY RESEARCH TO DETERMINE WHETHER THAT WAS SO?
A. THE PEOPLE OVER THERE THAT ARE AUTHORITIES IN THE AREA HAVE TOLD ME THAT. AND WE CAN GET SOME HERE TO - IN THIS COURTROOM, IF YOU WOULD LIKE TO GET THEM.
Q. I'M SURE THEY WILL BE CALLED, SIR. IN THE FORMATION OF THE POLICY, YOU WERE NOT PRIVY TO THE ORGANIZATIONAL MEETINGS, WERE YOU, AMONG SOLICITOR CONDON?
A. I DID NOT PARTICIPATE IN THOSE MEETINGS, NO.

Q. SO BY THE TIME THE POLICY WAS FORMED, WAS REDUCED TO WRITING, IN FACT YOU DID NOT PARTICIPATE AT ALL UP TO THAT POINT IN TIME, DID YOU?
A. NO, I DID NOT.
Q. AND THEN, SIR, THE POLICY WAS SUBMITTED TO THE BOARD OF TRUSTEES BY DR. DEL BENE, FAIR?
A. WELL IT WAS FIRST SUBMITTED FROM THE PEOPLE WHO CREATED THE POLICY. AND IT WAS THROUGH THIS DEBATED AND THOUGHTFULLY DEBATED AND PRAYERFULLY DEBATED, AND SENT OVER TO OUR EXECUTIVE COMMITTEE. AND THEY DEBATED IT AND CONSIDERED AND GAVE IT A LOT OF CONSIDERATION AND THOUGHTFULNESS. AND AFTER THEY POLISHED THE POLICY DOWN TO WHERE THEY THOUGHT IT WAS A POLICY THAT WOULD BE ACCEPTABLE, THEY SENT IT TO THE BOARD OF TRUSTEES. AND THE BOARD OF TRUSTEES CONSIDERED IT AND

**[EDWARDS 584]**

ACCEPTED IT AS INFORMATION IN THEIR MEETING.
Q. THANK YOU, SIR. THESE PRAYERFUL AND THOUGHTFUL CONSIDERATIONS, EACH OF THOSE TWO GROUPS, THE MEDICAL STAFF AND THE PEOPLE THAT FORMED THE ORIGINAL POLICY, YOU WEREN'T PRIVY TO, WERE YOU?
A. NO, SIR, I WAS NOT.

Q. SO, SIR, YOU DON'T KNOW WHETHER THEY PRAYED, WHETHER THEY THOUGHT, OR WHETHER THEY DISCUSSED, ALL YOU KNOW IS THAT IT CAME OUT OF THOSE CONSIDERATIONS, RIGHT?

A. ALL I KNOW IS FROM WHAT I HAVE BEEN TOLD PEOPLE WHO WERE IN THOSE MEETINGS.

Q. I'M SURE, SIR, THAT YOU UNDERSTAND THAT THE INFORMATION WE SEEK IN THE COURTROOM IS THAT FROM A PERCIPIENT WITNESS, ONE WHO PERCEIVED WHAT WAS HAPPENING. SO YOU DIDN'T PERCEIVE ANY OF THESE THINGS, DID YOU?

A. NO, EXCEPT WE HAD WRITTEN REPORTS ALONG THE WAY OF THE POLICY FORMATION.

Q. AND WHEN IT WAS SUBMITTED TO THE BOARD OF TRUSTEES, SIR, DO YOU SIT ON THAT BOARD?

A. NO, I SIT IN THE ROOM WHEN THE BOARD IS MEETING.

Q. YOU DON'T SIT ON THE BOARD?

A. I'M NOT A MEMBER OF THE BOARD OF TRUSTEES.

Q. AND THE BOARD OF TRUSTEES CONSIDERED IT UPON THE PRESENTATION OF DR. DEL BENE, DIDN'T THEY?

A. THAT'S CORRECT.

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

**EXCERPTS FROM TESTIMONY OF CRYSTAL FERGUSON**

**[FERGUSON 181]**

(TESTIMONY OF CRYSTAL FERGUSON, 11-25-96.)

MR. WHERRY: YOUR HONOR, AT THIS POINT I WOULD CALL CRYSTAL FERGUSON

- - -

CRYSTAL FERGUSON, PLF. WITNESS, SWORN

DIRECT EXAMINATION

BY MR. WHERRY:

Q. WHERE DO YOU LIVE, MS. FERGUSON?

A. 1905 DELTA STREET, NORTH CHARLESTON.

Q. LET ME GET YOU SOME WATER HERE. HOW OLD ARE YOU?

A. THIRTY-FIVE.

Q. WHAT IS YOUR DATE OF BIRTH?

A. JULY 13, 1961.

Q. MS. FERGUSON, IN EARLY OR MID 1991, WERE YOU PREGNANT?

A. YES, SIR.

Q. WHERE DID YOU LIVE THEN?

A. 1913 DISCO STREET.

Q. AND WHAT CITY IS THAT IN?

A. NORTH CHARLESTON.

Q. WHERE WERE YOU RECEIVING YOUR PRENATAL CARE?

A. STARTED OFF AT NORTH AREA HEALTH DEPARTMENT AND THEN I WAS TRANSFERRED TO MEDICAL UNIVERSITY.
Q. WHY WERE YOU TRANSFERRED TO THE MEDICAL UNIVERSITY OF SOUTH CAROLINA?

**[FERGUSON 182]**

A. NORMAL PROCEDURES I WAS IN EVERY TWO WEEKS AND THEN I WAS HIGH RISK. I CONFESSED THAT I WAS USING AND I NEEDED HELP.
Q. WHO DID YOU CONFESS TO MS. FERGUSON?
A. THE NORTH AREA SOCIAL WORKER.
Q. THAT YOU WERE USING WHAT?
A. COCAINE.
Q. BECAUSE YOU TOLD THEM THAT, IS THAT YOUR UNDERSTANDING OF WHY THEY TRANSFERRED YOU TO MUSC?
A. ONE OF THE REASONS. BECAUSE IT'S THE NORMAL PROCEDURE ANYHOW WHEN YOU GET DOWN TO YOUR LAST TWO MONTHS TO BE TRANSFERRED.
Q. DID YOU CONTINUE GETTING YOUR PRENATAL CARE AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA?
A. YES, SIR. UP UNTIL ABOUT SIX WEEK BEFORE I HAD THE BABY I WENT ON A VISIT AND MY PLACENTA WAS SEPARATING AND THEY KEPT ME OVERNIGHT.
Q. DURING THE TIME WHEN YOU WERE RECEIVING YOUR PRENATAL CARE FROM THE MEDICAL UNIVERSITY, DID YOU RECEIVE ANY

COUNSELING OR ANY INFORMATION ABOUT SUBSTANCE ABUSE AND PREGNANCY?
A. YES.
Q. FROM WHOM?
A. I'M NOT SURE OF THE NAME.
Q. WHAT WAS YOUR POSITION WITH RESPECT TO GETTING SUBSTANCE ABUSE TREATMENT?

**[FERGUSON 183]**

A. THREATS. I HAD NO PROBLEM WITH GETTING TREATMENT, MY PROBLEM WAS I COULDN'T GO INPATIENT BECAUSE I HAD TWO OTHER CHILDREN. AND MY HOME ENVIRONMENT, I HAD A LOT OF PROBLEMS. AND I KEPT TELLING THEM THAT I DIDN'T MIND GETTING TREATMENT, BUT I COULD NOT GO INPATIENT, IT HAD TO BE OUTPATIENT BECAUSE I DIDN'T HAVE ANYONE TO TAKE CARE OF MY TWO SONS AT HOME.
Q. WAS THERE ANY REFERRALS MADE FOR YOU BY MUSC OR ANY OF THE PEOPLE THERE TO AN OUTPATIENT TREATMENT CENTER?
A. AT THE TIME I WAS TOLD THEY HAD NO OUTPATIENT, I NEEDED TO GO INPATIENT IMMEDIATELY. I WAS GIVEN I THINK TWO OR THREE HOURS TO GO HOME AND GET SOME CLOTHES TOGETHER. AND I WAS SUPPOSED TO CALL A CAB AND GO BACK TO THE HOSPITAL WHERE THE REFERRAL WAS MADE.
Q. MS. FERGUSON, BECAUSE OF WHAT WE HEARD SO FAR, LET ME ASK

YOU A GENERIC QUESTION. AT ANY TIME IN ANY OF YOUR DEALINGS WITH MUSC, DID YOU HAVE ANY SPECIFIC RECOLLECTION OF EVER HAVING ANY DEALINGS WITH SHIRLEY BROWN?

A. I'M NOT SURE.

Q. OKAY. NOW, THE PEOPLE WHOEVER TOLD YOU YOU HAD TO GO HOME, AND HERE WAS TWO OR THREE HOURS AND HERE IS THE INPATIENT TREATMENT, WHAT DID YOU SAY TO THEM?

A. I TOLD THEM THAT I AGREED THAT I NEEDED TO GET INTO SOME TYPE OF TREATMENT, BUT I DISAGREED THAT I HAD TO DO IT WITH SUCH A HURRY BECAUSE I DID NOT PREPARE MYSELF TO GO INPATIENT AND I HAD TWO OTHER CHILDREN. AND I WAS GOING THROUGH A LOT

**[FERGUSON 184]**

OF PERSONAL CHANGES AT HOME. AND -

Q. WHAT KIND OF PERSONAL CHANGES?

A. MY HUSBAND WAS A USER AND HE WAS STEALING FROM ME.

Q. HE WAS STEALING FROM YOU?

A. YES. DURING THE TIME I WAS IN THE HOSPITAL FOR ONE DAY, I FOUND OUT THAT THEY DID APPROVE ME FOR SOME STAMPS AND I WAS GETTING UNEMPLOYMENT BECAUSE I WAS TEMPORARILY ON SICK LEAVE. I JUST STOPPED WORKING AND THEN MY BENEFIT OR UNEMPLOYMENT HAD STARTED AND HE HAD CASHED IT IN AND I WAS UPSET BECAUSE I

REALLY NEEDED THE BENEFITS TO TAKE CARE OF MY CHILDREN.
Q. DID YOU GO IN TO INPATIENT TREATMENT?
A. NO.
Q. AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA?
A. NO, I DIDN'T GO AT THAT TIME BECAUSE OF THE INCIDENT I WAS TOO HISTORICAL (SIC).
Q. DID THERE COME A POINT IN TIME, MS. FERGUSON, AS TO - THAT QUESTION WAS NOT COMING OUT WELL.
A. UMM-HMM.
Q. WHEN WAS YOUR CHILD BORN?
A. AUGUST THE 4TH, 1991.
Q. WHAT WAS YOUR CHILD'S NAME?
A. VIRGINIA ALETHA FERGUSON.
Q. AFTER YOUR CHILD WAS BORN - WELL, LET ME WITHDRAW THAT. WAS YOUR CHILD BORN AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA?

**[FERGUSON 185]**

A. YES, SIR.
Q. AFTER YOUR CHILD WAS BORN, FROM THE DELIVERY ROOM, WHERE DID YOU GO?
A. FROM THE DELIVERY?
Q. AFTER THE BABY WAS BORN?
A. TO THE ROOM. FROM THE DELIVERY ROOM I WAS PLACED IN THE ROOM.
Q. AT THAT TIME AFTER THE BABY WAS BORN, DID YOU HAVE ANY

CONVERSATION WITH ANY OF THE STAFF AT MUSC CONCERNING SUBSTANCE ABUSE AND YOUR BABY?

A. YES, SIR.

Q. WOULD YOU TELL THE JURY, PLEASE, GENERALLY WHAT THOSE CONVERSATIONS WERE.

A. WELL THE CONVERSATION, IT WAS VERY UNDERSTOOD THAT EVEN THOUGH I SHOULD HAVE BEEN ALREADY IN SUBSTANCE ABUSE PROGRAM BEFORE I HAD THE BABY, BUT AFTER I DIDN'T GET INTO IT IT WAS MANDATORY THAT I HAD TO GET INTO ONE. BUT -

Q. YOU SAID IT WAS MANDATORY?

A. IT WAS MANDATORY.

Q. WHO TOLD YOU IT WAS MANDATORY?

A. THAT'S WHAT THE NURSES AND STUFF WERE TELLING ME.

Q. MANDATORY OR WHAT?

A. THAT I GET INTO THE SUBSTANCE ABUSE. THEY WANTED TO TAKE MY BABY AWAY FROM ME AND UNTIL I SUCCESSFULLY COMPLETED IT. AND I HAD JUST LOST MY MOTHER THE DAY AFTER I HAD MY BABY.

**[FERGUSON 186]**

AND I WAS ARGUING WITH THEM. I HAD NO PROBLEM AS LONG AS IT WAS OUTPATIENT, BUT I DISAGREED WITH THEM FOR AS FAR AS THEM TAKING MY BABY AWAY FROM ME. AND I DIDN'T WANT TO GIVE MY BABY TO NOBODY. I WANTED TO GET TREATMENT, BUT I WANTED TO KEEP MY BABY. AND HE CAME -

Q. LET ME SEE IF I HAVE THIS RIGHT. YOUR BABY WAS BORN?
A. UH-HUH.
Q. THE DAY AFTER THAT YOUR MOTHER DIED?
A. MY MOTHER DIED 30 HOURS AFTER MY BABY WAS BORN.
Q. AND THE PEOPLE AT MUSC WANTED YOU TO IMMEDIATELY CHECK INTO AN INPATIENT PROGRAM?
A. YES.
Q. DID YOU DO THAT?
A. NO, SIR.
Q. DID YOU GO HOME?
A. YES, SIR.
Q. WHEN YOU WENT HOME, WHO, IF ANYONE, WAS THERE?
A. WELL I DIDN'T GO DIRECTLY TO MY HOUSE, I HAD TO GO AND STAY WITH MY GRANDMOTHER-IN-LAW, WHO WAS OVER ME AND MY CHILDREN, SO I WAS ABLE TO KEEP MY THREE KIDS.
Q. DID YOU HAVE AN APPOINTMENT TO GO INTO THE INPATIENT TREATMENT PROGRAM AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA?
A. WELL, AFTER I HAD THE BABY, IT CHANGED. I TALK TO SOMEONE ELSE AND I FOUND OUT THERE WAS A PROGRAM THAT I COULD GO IN THAT WAS OUTPATIENT. AND THE DATE THAT I WAS ARRESTED

**[FERGUSON 187]**

WAS THE DAY THAT I WAS SUPPOSED TO START OUTPATIENT.

Q. LET ME STOP YOU AND GO BACK AND TAKE THIS STEP BY STEP.
A. YES.
Q. YOU SAY THAT YOU FOUND AN OUTPATIENT PROGRAM?
A. YES.
Q. WHERE WAS THE OUTPATIENT PROGRAM?
A. THE CHARLESTON COUNTY SUBSTANCE ABUSE.
Q. AND DID YOU MAKE ARRANGEMENTS TO GO TO THE CHARLESTON COUNTY SUBSTANCE ABUSE PROGRAM?
A. I MADE ARRANGEMENTS THAT I WOULD BE THERE, BUT I WENT TO THE POLICE STATION FIRST AND I DIDN'T MAKE IT THERE THAT DAY. I WENT TO JAIL.
Q. WHAT WAS IT THAT YOU EXPECTED TO HAPPEN AT CHARLESTON COUNTY SUBSTANCE ABUSE?
A. I EXPECTED THEM TO WORK WITH ME.
Q. TO WORK WITH YOU TO DO WHAT?
A. TO GET OFF DRUGS. TO TREATMENT FOR MY ADDICTION.
Q. WERE YOU VOLUNTARILY GOING TO THAT PROGRAM?
A. YES.
Q. ON THE DAY THAT YOU HAD AN APPOINTMENT TO GO?
A. YES, SIR.
Q. DID YOU GO?
A. I DIDN'T GET A CHANCE TO.
Q. WHY?
A. BECAUSE I WENT TO THE CHARLESTON COUNTY POLICE

DEPARTMENT.
Q. WHY DID YOU GO THERE?
A. BECAUSE THEY WERE SUPPOSED TO TAKE ME STRAIGHT FROM THE HOSPITAL TO THE JAILHOUSE. BUT DUE TO FACT THAT MY MOTHER PASSED AWAY AND I WAS HISTORICAL (SIC) ABOUT THEM TAKING MY BABY, AND I HAD TO GET PREPARED FOR THE FUNERAL, AND SOME OF THE STAFF WAS UNDERSTANDING AND THEY WERE TALKING. SO I HAD SOME PEOPLE THAT WAS AGAINST ME AND SOME OF THEM THAT WAS FOR ME. AND THEY CAME TO THE AGREEMENT THAT THEY COULDN'T TAKE MY BABY, BUT I HAD TO STAY WITH MY GRANDMOTHER-IN-LAW AND LET HER BE OVER ME AND MY CHILDREN AND MONITOR ME SO I WOULDN'T DO ANYTHING TO HURT MY CHILDREN. AND I AGREED TO THAT.
AND THEN THE NEXT DAY BECAUSE I WAS IN THE HOSPITAL FOR THREE DAYS, I HAD A CESAREAN, WE BURIED MY MOTHER. AND THEN THE POLICEMAN CAME TO ARREST ME TWO DAYS AFTER WE BURIED MY MOTHER. BUT I WAS STILL RECOVERING FROM THE CESAREAN BECAUSE IT WAS MY FIRST CESAREAN AND I WAS STILL IN BED. SO INSTEAD OF ARRESTING ME AT MY GRANDMOTHER-IN-LAW WE MADE AN APPOINTMENT FOR ME TO COME IN WHEN I WAS FEELING BETTER.
Q. MADE AN APPOINTMENT FOR YOU TO COME IN WHERE?
A. COME TO THE POLICE STATION.

Q. AND YOU GOT BETTER, DID YOU GO TO THE POLICE STATION?
A. YES. THREE WEEKS LATER AFTER I HAD MY DAUGHTER, THE DAY MY DAUGHTER TURNED THREE WEEKS AND I WAS FEELING BETTER, I HAD AN APPOINTMENT TO GO TO SUBSTANCE ABUSE. AND I TOLD THEM ON

**[FERGUSON 189]**

THE DAY OF THE APPOINTMENT FOR THE SUBSTANCE ABUSE THAT I WAS GOING TO COME IN AND SEE THEM. MY APPOINTMENT FOR THE SUBSTANCE ABUSE TO START WAS AT TEN O'CLOCK. I WENT TO SEE THEM AT NINE O'CLOCK.
Q. WENT TO SEE WHO AT NINE?
A. THE POLICE DEPARTMENT DETECTIVE.
Q. YES, MA'AM. DO YOU REMEMBER THAT DETECTIVE'S NAME?
A. NO, I DON'T.
Q. WAS IT A MAN OR WOMEN?
A. IT WAS A MAN.
Q. AND WHEN YOU WENT TO SEE THE DETECTIVE, WHAT HAPPENED?
A. HE READ ME MY RIGHT AND PUT ME IN THE HOLDING CELL.
Q. WHERE DID YOU GO FROM THE HOLDING CELL?
A. TO A BOND HEARING.
Q. HOW MUCH BAIL WAS SET?
A. TWENTY-FIVE HUNDRED DOLLARS.
Q. DID YOU HAVE 2500 DOLLARS?
A. NO, I DIDN'T. MY GRANDMOTHER-IN-LAW GOT A BAILS BONDMAN AND PAID 250 DOLLARS TO GET ME OUT.

Q. HOW LONG WERE YOU IN JAIL BEFORE YOUR GRANDMOTHER GOT THE 250 DOLLARS?
A. ELEVEN HOURS.
Q. DESCRIBE THE JAIL - WELL, FIRST OF ALL WHEN YOU WERE TAKEN FROM THIS HOLDING CELL, WERE YOU TAKEN TO THE BOND HEARING?

**[FERGUSON 190]**

A. YES, SIR.
Q. WERE YOU HANDCUFFED?
A. HANDCUFFED, SHACKLED, THE WORKS.
Q. AGAIN, ALTHOUGH WE HAVE ALL HEARD IT BEFORE, MS. FERGUSON, DESCRIBE THE HANDCUFFED AND SHACKLES.
A. HANDCUFF BY TWO HAND. THE TWO SHACKLED TO THE FOOT.
Q. I DON'T MEAN TO MINIMIZE WHAT YOU WENT THROUGH, BUT WERE YOU DRESSED WHEN YOU WERE HANDCUFFED AND SHACKLED?
A. YES, SIR.
Q. WHEN YOU WERE TAKEN TO THE JAIL, YOU SAID THAT YOU WERE IN THERE ELEVEN HOURS?
A. YES, SIR.
Q. DESCRIBE THE CELL THAT YOU WERE HELD IN?
A. IT WAS LOUD. IT WAS SMALL. IT WAS - IT WAS MY FIRST EXPERIENCE WITH BEING IN JAIL AND IT WAS VERY FILTHY BECAUSE I HAD CESAREAN AND I DIDN'T HAVE ANY CHANGING SANITARY. I WAS

HYSTERICAL BECAUSE I NEVER BEEN IN JAIL IN MY LIFE AND I COULDN'T UNDERSTAND WHY I WAS BEING TREATED LIKE A MASS MURDERER. THAT'S THE WAY I FELT. AND THE NOISE, YOU COULD BARELY HEAR YOURSELF TALK.

Q. JUST BY THE WAY, WERE YOU WERE DISCHARGED FROM THE HOSPITAL, WERE YOU - WHEN YOU LEFT THE HOSPITAL TO GO TO YOUR GRANDMOTHER-IN-LAW'S HOUSE, WERE YOU GIVEN ANY PERSONAL MEDICAL SUPPLIES WHEN YOU LEFT THE HOSPITAL?

A. YES, SIR.

**[FERGUSON 191]**

Q. AND WOULD YOU DESCRIBE WHAT YOU WERE GIVEN TO THE JURY?

A. I'M NOT SURE. EVERYTHING THAT I USED INSIDE THE HOSPITAL I KEPT THAT. PRETTY WELL EVERYTHING THAT I NEEDED STARTED ME OFF.

Q. OKAY. AFTER YOUR GRANDMOTHER-IN-LAW POSTED YOUR BAIL, WHERE DID YOU GO?

A. BACK TO HER HOUSE.

Q. AND SUBSEQUENTLY AFTER THAT, DID YOU GET INTO SUBSTANCE ABUSE TREATMENT?

A. YES, SIR, IMMEDIATELY.

Q. MS. FERGUSON, JUST FOR THE PURPOSE OF THIS CASE, WHAT POLICE DEPARTMENT WAS IT THAT YOU WENT TO?

A. CHARLESTON COUNTY DEPARTMENT DOWNTOWN.
Q. IS THAT WITHIN THE CITY OF CHARLESTON?
A. YES, SIR.
Q. NOW - I'M SORRY. I LOST MY TRAIN OF THOUGHT. I THOUGHT
- NEXT TO LAST QUESTION OF YOU WAS, DID YOU EVENTUALLY GET
INTO SUBSTANCE ABUSE TREATMENT?
A. YES, SIR.
Q. WHERE?
A. CHARLESTON COUNTY SUBSTANCE ABUSE.
Q. HOW LONG DID YOU STAY IN THAT?
A. TWO AND A HALF YEARS.
Q. WAS IT SUCCESSFUL?
A. NO, SIR. I NEVER - I STOPPED MYSELF BUT I

**[FERGUSON 192]**

Q. WHY?
A. I DIDN'T GET A PIECE OF PAPER SAYING THAT I SUCCESSFULLY
COMPLETE IT.
Q. DID YOU STOP USING COCAINE?
A. YES, SIR. I HAD A RELAPSE FROM TIME TO TIME BUT I DO MY
PART AS MUCH AS I CAN, BUT I STILL HAVE TO GO TO SUPPORT
GROUP.
Q. MS. FERGUSON, LET ME UNDERSTAND, WHEN YOU SAY THAT YOU
RELAPSED, I TAKE IT THAT'S A NICE WAY OF SAYING THAT YOU USED
COCAINE AGAIN?
A. YES, SIR.

Q. WHY WOULD YOU DO THAT? EXPLAIN TO THE JURY WHAT IT IS THAT MAKES YOU USE DRUGS AGAIN?
A. I TRY NOT TO USE IT, BUT I FIND MYSELF USING IT. IF I'M AROUND THE CROWD, I FIND - IF UNDER A LOT OF PRESSURE AND - I MEAN, I GOT A LOT OF PERSONAL PROBLEMS. I'M NOT MAKING UP EXCUSES, BUT I'M A DRUG ADDICT, AN ALCOHOLIC, AND IT'S HARD FOR ME NOT TO USE SOMETIME IF I'M IN THAT ATMOSPHERE. AND THE TEMPTATION SOMETIMES JUST COME FROM PEER PRESSURE, YOU KNOW. SOMETIME I TAKE A DRINK. IT'S NO EXCUSE FOR IT. IT'S JUST AN ADDICTION TO SOMETHING THAT HAPPENED.
Q. MS. FERGUSON, I'M SURE THAT YOU HAVEN'T KEPT COUNT, BUT APPROXIMATELY HOW MANY TIMES HAVE YOU RELAPSED SINCE - SINCE COMPLETING YOUR TWO AND A HALF YEARS IN CHARLESTON COUNTY SUBSTANCE ABUSE PROGRAM?

**[FERGUSON 193]**

A. I CAN'T COUNT.
Q. OKAY. GOING THROUGH THAT PROGRAM. WAS THERE ANY CHILD CARE INVOLVED IN THAT PROGRAM?
A. NO, SIR.
Q. WERE THE PARTICIPANTS ALL FEMALE OR ALL MALE OR A MIXTURE?
A. IT WAS A FEMALE THAT WAS COUNSELING ME.

Q. BUT THE PEOPLE WHO WERE TAKING IT; THE PEOPLE WHO WERE TAKING THE PROGRAM?
A. UMM-HMM.
Q. THE PATIENTS LIKE YOU?
A. YES.
Q. WERE THEY ALL FEMALE, ALL MALE, OR WAS IT A MIXTURE?
A. FEMALE AND MALE. BOTH.
Q. THE ARREST, FERGUSON, DID YOU EVER GO TO TRIAL FOR THAT? DID YOU EVER GO TO A COURTROOM LIKE THIS FOR A JURY?
A. I WENT TO A PRETRIAL, AS I RECALL. I HAD AN ATTORNEY AND WHAT IT WAS 50 DOLLARS I HAD TO PAY FOR FIRST OFFENSE. AND I RECEIVE MY PAPERS FROM DSS STATING THAT I WAS - MY KID WERE NO LONGER IN DANGER OF ME AND THAT I COULD YOU KNOW GET ON WITH MY LIFE AND GO BACK WITH A PLACE OF MY OWN. BUT I NEVER WENT TO COURT, I JUST HAD TO GO SEE MY ATTORNEY A COUPLE OF TIMES. I WENT TO THE FIRST OFFENSE AND I HAD TO STAY IN SUBSTANCE ABUSE UNTIL THAT WAS CLEARED UP.
Q. WERE THE CHARGES AGAINST YOU EVENTUALLY DISMISSED?

**[FERGUSON 194]**

A. I NEVER RECEIVED A CHARGE THAT THEY WERE DISMISSED. I WENT TO TALK WITH AN ATTORNEY ONE TIME AND HE WAS TALKING THAT

EVEN AFTER IT WAS DISMISSED THE SOLICITOR MIGHT PICK IT UP.
SO I REALLY DON'T KNOW WHAT THE OUTCOME WAS. I ONLY KNOW THAT I RECEIVED PAPERS CONCERNING MY CHILDREN. AND I TOOK THAT AS, YOU KNOW, EVERYTHING WAS OKAY. I NEVER GOT IN TROUBLE BEFORE AND I HAVE NO WAY OF KNOWING.
Q. MS. FERGUSON, AS YOU SIT HERE TODAY IN THE COURTROOM, WOULD YOU DESCRIBE TO THE JURY PLEASE HOW THIS EXPERIENCE HAS AFFECTED YOUR LIFE AND HOW IT AFFECTS YOUR LIFE NOW, HAVING BEEN ARRESTED AND HAVING BEEN THROUGH WHAT YOU HAVE BEEN THROUGH?
A. WELL, I HAVE LOW SELF-ESTEEM. AND AS FAR AS THE LAW AND THE HOSPITAL IS CONCERNED, I HAVE MY DOUBTS ABOUT HOW MUCH YOU CAN TRUST THEM, BECAUSE WHEN I WENT TO THEM, I DID WHAT I THOUGHT THAT WAS RIGHT GETTING PRENATAL CARE. REGARDLESS OF DRUG OR ALCOHOL OR WHATEVER, IF YOU'RE PREGNANT, YOU HAVE THE RIGHT TO GET PRENATAL CARE. AND I JUST FEEL LIKE I DIDN'T GET ENOUGH HELP, THAT I WAS ASKING FOR IT BEFORE I WAS THROWN IN JAIL.
Q. WELL, LET'S TALK ABOUT THAT. THEY OFFERED YOU INPATIENT TREATMENT, DIDN'T THEY?
A. YES, SIR.
Q. WHAT WAS WRONG WITH THAT?

A. I HAD TWO KIDS AT HOME. SIX WEEKS IS A LONG TIME IF YOU

**[FERGUSON 195]**

DON'T HAVE SOMEONE TO CARE FOR YOUR CHILDREN.
Q. HOW ABOUT YOUR HUSBAND?
A. MY HUSBAND WAS A DRUG ADDICT AND ALCOHOLIC, HE WAS NOT RESPONSIBLE. HE WAS DANGERING MY CHILDREN LIFE. HE WOULD LEAVE THEM IN THE HOUSE BY THEIRSELF.
Q. DID YOU TELL - DID YOU TELL THE PEOPLE AT MUSC ABOUT THAT?
A. YES.
Q. WAS YOUR HUSBAND EVER ARRESTED AND CHARGED?
A. NO.
Q. ARE YOU STILL LIVING WITH YOUR HUSBAND?
A. NO, SIR.
MR. WHERRY: YOUR HONOR, I HAVE NO FURTHER QUESTIONS OF MS. FERGUSON.
THE COURT: CROSS-EXAMINATION.

<u>CROSS-EXAMINATION</u>

BY MS. SHOWERS:
Q. MS. FERGUSON, WAS YOUR HUSBAND EVER TREATED AS AN OBSTETRICAL PATIENT AT MUSC?
A. NO, SIR. I MEAN, NO, MA'AM.
MS. SHOWERS: THIS IS CRYSTAL FERGUSON'S ORIGINAL RECORDS.
MR. WHERRY: YOUR HONOR, WE HAVE NO OBJECTION TO IT

BEING USED SUBJECT TO REDACTION, THE NORMAL WAY WE'RE HANDLING THESE

**[FERGUSON 196]**

THE COURT: OKAY.
Q. (BY MS. SHOWERS, CONTINUING) MS. FERGUSON, YOU HAVE THREE CHILDREN; IS THAT RIGHT?
A. YES, MA'AM.
Q. AND YOU CAME TO MUSC FOR THE FIRST TIME WITH YOUR THIRD PREGNANCY ON JUNE 19, 1991; IS THAT RIGHT?
A. YES, SIR.
Q. AND AT THAT TIME YOU WERE HAVING PRE-TERM LABOR OR EARLY LABOR; IS THAT RIGHT?
A. YES, MA'AM.
Q. AND THAT'S BECAUSE YOU WERE USING COCAINE; ISN'T THAT TRUE?
THE WITNESS: I'M NOT SURE.
MR. WHERRY: IT CALLS FOR A CONCLUSION OF A MEDICAL NATURE. SHE KNOWS WHAT SHE HAS, SHE DOESN'T KNOW WHY. SHE ISN'T A DOCTOR.
THE COURT: WELL I DON'T KNOW WHETHER SHE DOES OR NOT. LET'S SEE. OBJECTION OVERRULED.
Q. (BY MS. SHOWERS, CONTINUING) GO AHEAD.
A. NO, I ASSUMED THAT I WAS GOING THERE BECAUSE IT WAS ALMOST THAT TIME FOR ME TO GO THERE. AND I ADMITTED TO THE

LADY THAT I WAS USING, AND SHE SAID THAT WAS THE PROCEDURE.
BUT I DIDN'T KNOW THEY WAS HAVING TROUBLE WITH THE PREGNANCY
WHEN I WAS GOING TO THE NORTH AREA HEALTH DEPARTMENT BECAUSE
EVERYTHING SEEMED TO BE FINE. I WENT TO MY NORMAL VISIT

**[FERGUSON 197]**

WHENEVER I WAS SCHEDULED TO COME IN. AND THEY WERE TELLING ME
EVERYTHING WAS FINE.
Q. AND YOU WERE 32 WEEKS PREGNANT; IS THAT RIGHT?
A. YES, MA'AM.
AND W787HEN YOU CAME IN, YOU WERE GIVEN A CONSENT FORM FOR
TREATMENT AT AMBULATORY CARE; IS THAT RIGHT?
A. YES, MA'AM.
Q. AND THAT IS DATED JUNE 19, 1991?
A. YES, MA'AM.
Q. AND THAT'S YOUR SIGNATURE THERE AT THE BOTTOM?
A. YES, MA'AM.
MS. SHOWERS: 1-A.
Q. (BY MS. SHOWERS, CONTINUING) AND AFTER YOU CAME TO MUSC
- EXCUSE ME, ON THAT DAY, YOU FOUND OUT THAT YOU HAD TESTED
POSITIVE FOR COCAINE, TRUE?
A. YES, MA'AM.
Q. AND A NURSE CAME TO SEE YOU TO TALK ABOUT THE HARMFUL
EFFECTS OF COCAINE ON YOUR BABY; ISN'T THAT TRUE?
A. YES, MA'AM.

Q. AND SHE SHOWED YOU A VIDEO ABOUT THE HARMFUL EFFECTS OF ILLEGAL DRUGS ON YOUR UNBORN CHILD, ISN'T THAT ALSO TRUE?
A. YES, MA'AM.
Q. SHE ALSO GAVE YOU A LETTER. IS THAT YOUR SIGNATURE THERE ON THE BOTTOM?
A. YES, MA'AM.

**[FERGUSON 198]**

MS. SHOWERS: 1-B.
Q. (BY MS. SHOWERS, CONTINUING) AND THIS LETTER IS FROM THE SOLICITOR, NINTH JUDICIAL CIRCUIT, CHARLIE CONDON; IS THAT RIGHT?
A. YES, MA'AM.
Q. AND THAT LETTER WARNED YOU THAT YOU NEEDED TO GO GET SUBSTANCE ABUSE TREATMENT AND PRENATAL CARE TREATMENT IN AN EFFORT TO REHABILITATE YOURSELF AND THE GOOD OF YOURSELF AND YOUR BABY; ISN'T THAT TRUE?
A. YES, MA'AM.
Q. AND AFTER TALKING TO ONE OF THE NURSES AT MUSC, YOU TOLD THAT NURSE THAT YOU WANTED TO GO TO INPATIENT SUBSTANCE ABUSE TREATMENT AT THE MUSC PSYCHIATRIC INSTITUTE; ISN'T THAT TRUE?
A. NO, MA'AM.
Q. THAT IS NOT TRUE?
A. NO, MA'AM.
Q. SO IF THERE IS SOMETHING IN MEDICAL RECORD THAT SAYS THAT, THAT IS NOT TRUE?

A. THAT'S NOT TRUE.
Q. AND YOU ALSO TOLD THAT SAME NURSE THAT YOU HAD YOUR SISTER AT HOME TAKING CARE OF YOUR CHILDREN WHILE YOU WERE IN THE HOSPITAL AND SHE COULD CONTINUE TO TAKE CARE OF YOUR CHILDREN WHILE YOU WERE AT THE PSYCH UNIT?
A. NO, MA'AM. I DON'T RECALL TELLING HER THAT. I RECALL US SPEAKING ABOUT DID I HAVE ANYBODY THAT COULD TAKE CARE OF MY

**[FERGUSON 199]**

CHILDREN. AND I TOLD HER THAT I HAD A SISTER. I HAD A DYING MOTHER AT THAT TIME AND MY SISTER WAS CAUGHT IN THE MIDDLE OF TRYING TO HELP ME AND HELPING MY MOTHER. SHE WAS BACK AND FORTH TO THE HOSPITAL ALL OF THE TIME.
Q. YOU WERE GIVEN AN APPOINTMENT TO GO TO THE MUSC PSYCHIATRIC INSTITUTE AFTER YOU LEFT MUSC; ISN'T THAT TRUE?
A. YES, MA'AM.
Q. BUT YOU DIDN'T GO?
A. NO, MA'AM. I DIDN'T HAVE TIME.
Q. DID YOU EVER CALL ANYONE AT MUSC TO SAY I NEED TO GO TO OUTPATIENT, MY CIRCUMSTANCES HAVE CHANGED?
A. I RECALL CALLING AND TALKING TO SOMEONE. THAT WAS A LONG TIME AGO. I WAS A VERY SICK PERSON AT THAT TIME.
Q. YOU NEVER WENT TO SUBSTANCE ABUSE TREATMENT TO GET

OUTPATIENT ON YOUR OWN, DID YOU?
A. NOT BEFORE I GOT - BEFORE I HAD THE BABY. AFTER I HAD THE BABY, BUT I WANTED TO GO BEFORE I HAD THE BABY.
Q. BETWEEN JUNE 19TH AND AUGUST 4TH WHEN YOU NEXT CAME BACK TO MUSC, DID YOU EVER GO GET SUBSTANCE ABUSE TREATMENT?
A. NO, MA'AM.
Q. AND YOU DIDN'T CALL ANYONE AT MUSC TO TRY TO HELP YOU GET SUBSTANCE ABUSE TREATMENT?
A. I CALLED SOMEONE CONCERNING THAT.
Q. WHO DID YOU CALL?
A. I'M NOT SURE THE PERSON'S NAME.

**[FERGUSON 200]**

Q. AND YOU CONTINUED TO USE DRUGS DURING THAT THE FOLLOWING TWO MONTHS; ISN'T THAT TRUE?
A. I TRIED NOT TO, BUT A COUPLE OF TIMES I DID.
Q. OKAY. AND THEN YOU CAME INTO MUSC AND YOU WERE ADMITTED FOR AN EMERGENCY C SECTION BECAUSE YOUR PLACENTA WAS SEPARATING FROM THE UTERINE WALL; ISN'T THAT TRUE?
MR. WHERRY: OBJECTION, YOUR HONOR. SAME BASIS.
THE WITNESS: I HONESTLY DON'T KNOW WHY THEY GAVE ME A CESAREAN.
THE COURT: I SUSTAIN THE OBJECTION.
MR. WHERRY: THANK YOU.

THE COURT: LADIES AND GENTLEMEN, THE ONLY WAY THAT SHE COULD HAVE ANY IDEA WHAT THE CAUSES OF HER RECEIVING CERTAIN TREATMENT IS SOMEONE TOLD HER. AND THAT'S HEARSAY. AND SO IF IT'S IMPORTANT TO PROVE TO YOU WHAT HER MEDICAL CONDITION WAS, THEN THE DOCTOR THAT TREATED HER, OR THE DOCTORS THAT TREATED HER SHOULD BE BROUGHT IN HERE AND TESTIFY WHERE THEY CAN BE CROSS-EXAMINED. IT'S IMPROPER TO BRING THAT TESTIMONY IN HERE BY WAY OF HEARSAY EVIDENCE. SO, I HAVE SUSTAINED THE OBJECTION. DISREGARD THE TESTIMONY. DISREGARD ANY INFERENCE THAT MAY HAVE BEEN DRAWN FROM THE QUESTION AND ANSWER.

YOU MAY PROCEED.

MS. SHOWERS: THANK YOU VERY MUCH.

Q. (BY MS. SHOWERS, CONTINUING) AT THE TIME OF DELIVERY,

**[FERGUSON 201]**

YOU TESTED POSITIVE FOR COCAINE, DIDN'T YOU?

A. YES, MA'AM.

Q. AND SO DID YOUR BABY?

A. YES, MA'AM.

Q. AND BEFORE YOU EVER CAME TO THE MEDICAL UNIVERSITY, YOU SAW THE PUBLIC SERVICE ANNOUNCEMENT THAT SOLICITOR CONDON HAD

OUT ON THE TELEVISION WARNING WOMEN THAT IF THEY USE DRUGS THEY MAY FACE ARREST?
A. YES, MA'AM.
Q. AND YOU KNEW IF YOU TESTED POSITIVE FOR DRUGS DURING YOUR PREGNANCY THAT YOU COULD GO TO JAIL?
A. YES, MA'AM.
Q. AND YOU WERE AWARE THAT THERE WERE OPPORTUNITIES FOR YOU TO ATTEND SUBSTANCE ABUSE TREATMENT INSTEAD OF GOING TO JAIL AND BEING PROSECUTED?
A., NO, MA'AM.
Q. YOU WERE NOT AWARE OF THAT?
A. NOT OUTPATIENT.
Q. WELL, YOU WERE AWARE THAT THERE WAS SUBSTANCE ABUSE TREATMENT AVAILABLE THAT YOU COULD HAVE GONE TO IN LIEU OF BEING PROSECUTED, TRUE?
A. NO.
Q. YOU DON'T REMEMBER TELLING ME THAT IN YOUR DEPOSITION?
A. AT THE TIME, AS I THINK ABOUT IT, LIKE I SAY THAT WAS A LONG TIME AGO AND I WAS VERY SICK. IF I HAD TO DO IT ALL OVER

**[FERGUSON 202]**

AGAIN, I WOULDN'T GO TO JAIL I WOULD HAVE WENT OUTPATIENT. BUT I STILL SAY THAT I COULDN'T GO INPATIENT BECAUSE OF THE OTHER TWO KIDS.
Q. SO YOU WERE AWARE THERE WAS SUBSTANCE ABUSE TREATMENT AVAILABLE FOR YOU?

A. YES, BUT NOT OUTPATIENT.
Q. AND WHEN I TOOK YOUR DEPOSITION, DO YOU RECALL TELLING ME THAT THE SUBSTANCE ABUSE TREATMENT THAT YOU GOT AT CHARLESTON COUNTY SUBSTANCE ABUSE COMMISSION WAS HELPFUL AND EFFECTIVE?
A. YES, SIR. YES, MA'AM.
Q. AND, MS. FERGUSON, YOU'RE CURRENTLY PREGNANT NOW; ISN'T THAT TRUE?
A. YES, I AM.
Q. ARE YOU USING COCAINE DURING THIS PREGNANCY?
A. NO, MA'AM.
MS. SHOWERS: ONE MOMENT, YOUR HONOR.
Q. (BY MS. SHOWERS, CONTINUING) JUST A COUPLE MORE QUESTIONS, MS. FERGUSON. I'M GOING TO ASK YOU IF THAT IS YOUR SIGNATURE ON THE BOTTOM OF THE PAGE?
A. YES, MA'AM.
Q. I'LL SHOW THEM ALL TO YOU, MS. FERGUSON. IS THAT YOUR SIGNATURE?
MR. WHERRY: YOUR HONOR, MAY I BE HEARD ON THESE DOCUMENTS UNDER 270(D)(D).
MS. SHOWERS: 290.

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**[FERGUSON 205]**

MS. SHOWERS: AT THE TIME.
THE COURT: IS THERE ANY OBJECTION TO THIS?
MS. PALTROW: UNDER THE CFR SECTION 2.61.

THE COURT: UMM-HMM.
- MS. PALTROW: AND 2.64, ANY PART OF ANY SUBSTANCE ABUSE RECORD MUST BE ORDERED BY THIS COURT TO BE ALLOWED IN. WE JUST WANT TO MAKE SURE THAT THEY'RE DONE ACCORDING TO THAT.
THE COURT: LET'S MARK THESE FOR IDENTIFICATION. THESE PURPORT TO BE SOME CONSENTS FOR THE RELEASE OF INFORMATION. I DON'T KNOW WHY THE CONSENT WOULD HAVE ANY RELEVANCE, UNLESS THE INFORMATION FOLLOWS.
MS. SHOWERS: WE WANT TO MOVE IT INTO EVIDENCE.
THE COURT: WHEN YOU MOVE IT IN, I'LL LOOK AT IT AND SEE WHETHER OR NOT I CAN MAKE A FINDING OF FACT. BUT IN THE MEANTIME MARK IT FOR IDENTIFICATION AND STATE THE NUMBER FOR THE RECORD.
DEPUTY CLERK: OKAY.
THE COURT: LET'S PROCEED WITH EXAMINATION OF THIS WITNESS.
DEPUTY CLERK: THAT'S DEFENDANTS' EXHIBIT NUMBERS 1-C, 1-D,1-E AND 1-F FOR IDENTIFICATION.
MS. SHOWERS: YOUR HONOR, THEN I'M MOVING INTO EVIDENCE THE SUBSTANCE ABUSE RECORD MARKED AS DEFENDANTS' EXHIBIT 5.
I DON'T HAVE ANY OTHER QUESTIONS.

* * *

**[FERGUSON 207]**

MY - MY MENTAL CONDITION WASN'T WELL AT ALL.
Q. WAS YOUR PHYSICAL CONDITION - WHEN YOU WENT TO THE HOSPITAL, WHAT WAS YOUR PHYSICAL CONDITION?
A. I GUESS MY PHYSICAL CONDITION WAS AS WELL TO BE EXPECTED.
Q. DID YOU READ THAT CONSENT BEFORE YOU SIGNED IT?
A. NO.
Q. WHAT DID YOU THINK YOU WERE CONSENTING TO?
A. I THOUGHT IT WAS SOMETHING MORE LIKE TO HELP ME.
Q. WHEN YOU TOLD THE PEOPLE AT MUSC THAT YOU WERE USING COCAINE WHEN YOU WERE PREGNANT, WHY DID YOU DO THAT?
A. BECAUSE I DIDN'T KNOW HOW MUCH WAS TOO MUCH OR TOO LITTLE. I HAVE BEEN AROUND SEVERAL PEOPLE THAT HAD BABIES THAT NOTHING WAS WRONG WITH THEM. I PRAYED A LOT. I PRAYED THAT MY BABY WAS GOING TO BE ONE OF THOSE BABIES THAT WAS ONE OF THE LUCKY ONES, BUT I COULDN'T BE POSITIVE OF THAT. AND I KNEW THAT I WAS WRONG, BUT I KNEW THAT I NEEDED HELP.
Q. WHAT DID YOU EXPECT THE HOSPITAL TO DO FOR YOU?
A. HELP ME.
MR. WHERRY: I HAVE NO FURTHER QUESTIONS ON

REDIRECT.

RECROSS-EXAMINATION

BY MS. SHOWERS:

Q. MS. FERGUSON, THEY DID GIVE YOU AN APPOINTMENT TO GO TO SUBSTANCE ABUSE TREATMENT, DID THEY NOT?

**[FERGUSON 208]**

A. YES, MA'AM.

MS. SHOWERS: THANK YOU. NOTHING FURTHER.

THE COURT: THANK YOU. YOU'RE EXCUSED.

(TESTIMONY OF MS. FERGUSON COMPLETED.)

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

**EXCERPTS FROM TESTIMONY OF DEBORAH FRANK**

**[FRANK 944]**

CAN PICK IT BACK UP VERY EASILY.
AND SO JUST DON'T WORRY ABOUT IT DURING THE HOLIDAYS. HAVE A GOOD TIME AND BE CAREFUL AND BE SAFE AND WE'LL SEE YOU BACK ON THE 6TH AT TEN O'CLOCK.
MR. WHERRY: I REALIZE WHEN I SAID TEN MINUTES, IT'S NOW TWENTY. WE CALLED IMMEDIATELY. IT'S A THREE - OR FOUR-MINUTE WALK.
THE COURT: SHE CAN'T GET IN THE BUILDING.
MR. WHERRY: THAT MAY BE THE PROBLEM, ALTHOUGH WE HAVE SOMEONE DOWNSTAIRS TO FACILIATE THAT. AND I THINK WE JUST GOT LUCKY. HERE COMES DR. FRANK.

- - -

DEBORAH FRANK, PLF. WITNESS, AFFIRMED.

DIRECT EXAMINATION

BY MS. PALTROW:

Q. GOOD AFTERNOON, DR. FRANK. WITH THE COURT'S AND JURY'S INDULGENGE WE STILL HAVE A FEW MINUTES TO ASK A FEW QUESTIONS.

TELL ME ABOUT YOUR EDUCATIONAL BACKGROUND?
A. I GRADUATED FROM RADCLIFFE COLLEGE AND HARVARD MEDICAL SCHOOL. TRAINED AT CHILDREN'S ORTHOPEDIC HOSPITAL IN SEATTLE AND DID A FELLOWSHIP WITH DR. BRAZELTON AT CHILDREN'S HOSPITAL AT BOSTON.
Q. AND CAN YOU TELL ME WHERE YOU'RE CURRENTLY WORKING?
A. BOSTON MEDICAL CENTER, WHICH USED TO BE CALLED BOSTON

**[FRANK 945]**

CITY.
Q. WHAT D0 YOU DO THERE?
A. I AM ASSOCIATE PROFESSOR OF PEDIATRICS AT THE SCHOOL OF MEDICINE. AND I RUN A LARGE RESEARCH PROJECT FUNDED BY THE NATIONAL CENTER OF DRUG ABUSE FOLLOWING CHILDREN WHO ARE PRENATELY EXPOSED AND CHILDREN WHO WERENT. AND ALSO RUN A PROGRAM FOR MALNOURISHED KIDS.
Q. ARE THOSE TWO OF YOUR AREAS OF EXPERTISE?
A. THEY ARE.
Q. AND CAN YOU TELL ME WHAT OTHER RESEARCH YOU MAY HAVE DONE IN THE FIELD OF SUBSTANCE-EXPOSED INFANTS?
A. I WAS PART OF A STUDY DIRECTED BY DOCTOR ZUCKERMAN, WHEN I FIRST CAME TO THE HOSPITAL, STUDYING BIRTH OUTCOMES OF

CHILDREN EXPOSED TO COCAINE AND MARIJUANA AND OTHER SUBSTANCES PRENATALLY. I HAVE ALSO WRITTEN A PAPER ABOUT INTENTIONS TO BREAST FEED. I HAVE WRITTEN A PAPER ABOUT ABOUT BODY COMPOSTION FOLLOWING DRUG EXPOSURE. AND THEN I'M NOW DOING A STUDY OF WHERE THE OTHER ONE LEFT OFF, ALTHOUGH IT'S A NEW GROUP OF KIDS, WHERE WE RECRUIT THEM AT BIRTH AND THEN FOLLOW THEM. SO WE'RE FOLLOWING THEM NOW UP TO AGE 6.

Q. CAN YOU TELL ME, HAVE YOU PUBLISHED ANY RESEARCH ARTICLES ON THE SUBJECT OF COCAINE AND OTHER DRUG-EXPOSED INFANTS?

A. I JUST CAN'T GIVE YOU A LIST. I HAVE ALSO DONE A OF REVIEW ARTICLES THAT AREN'T JUST BASED ON OUR RESEARCH, BUT PULL TOGETHER THE RESEARCH OF A LOT OF OTHER PEOPLE AND TRYING

* * *

**[FRANK 952]**

MANY TIMES HE BANGS AND HOW MANY TIMES HE SMILES AND HOW MANY TIMES HE PRETENDS HE IS COOKING DINNER. IT'S VERY TEDIOUS, BUT THAT'S WHAT CODING IS. DOCUMENTING BEHAVIOR MINUTE TO MINUTE.

Q. DO YOU HAVE AN OPINION ABOUT WHETHER ONE HIT OR ONE LINE OF COCAINE IS LIKELY TO CAUSE DEATH OR DAMAGE TO A PARTICULAR

PREGNANCY?
A. I WOULD THINK THAT ONE LINE WOULD BE VERY UNLIKELY. THAT A MASSIVE DOSE IN GRAMS COULD BE DANGEROUS AND - BUT, AGAIN, MOST OF OUR DATA SHOWS THAT IT'S THE VERY HIGHEST DOSES WHERE THE DANGER IS.
Q. AND IN TERMS OF - DO YOU HAVE AN OPINION ABOUT THE RELATIVE RISK OF ONE LINE OF COKE, USING COCAINE ONCE, VERSUS OTHER SUBSTANCES?
A. WELL, MY OPINION IS THAT - ALL SUBSTANCES IT DEPENDS ON DOSE. THAT HALF A GLASS OF CHAMPAGNE WILL PROBABLY NOT DO THE MOTHER OR BABY MUCH HARM. THAT A FIFTH OF WHISKEY COULD EASILY KILL BOTH OF THEM. THAT ONE LINE OF COCAINE IS NOT A GOOD IDEA, BUT I WOULD BE REALLY WORRIED IF WE STARTED TALKING GRAMS. SAME WITH OPIATES, DEPENDING ON THE TOLERANCE OF THE LADY, HOW USED SHE IS TO OPIATES. IT - YOU KNOW, A SMALL DOSE WILL NOT DO PERMANENT DAMAGE. A LARGE ONE COULD PUT HER IN A COMA AND KILL THE BABY, TOO, SURE.
Q. THAT WOULD BE FOR HEROIN?
A. YES, HEROIN IS AN OPIATE. I'M SORRY.

* * *

**[FRANK 956]**

A. MY OPINION IS THAT THERE WAS, AGAIN THERE WERE A LOT OF

SERIOUS WHAT WE CALL METHODOLOGICAL ISSUES IN THE EARLY RESEARCH, WHICH IS OFTEN WHAT HAPPENS AND THAT THEY RAISE QUESTIONS, BUT IT CERTAINLY DIDN'T GIVE ANY DEFINITIVE ANSWERS. AND THE ISSUES ARE THE ONES WE HAVE TALKED ABOUT. NO CONTROLS, THE PEOPLE WHO ARE ASSESSING THE KIDS KNEW THE HISTORY AND SO HAD EXPECTATIONS, DIDN'T ACCOUNT FOR OTHER EXPOSURES AND OTHER PROBLEMS. THE WHOLE - THE DOCTOR CHASNOFF'S GROUP, FOR EXAMPLE, IS A VERY UNUSUAL, SELECT GROUP BAD ENOUGH TO GET INTO DRUG TREATMENT. YOU KNOW. AND SO THAT THE EARLY RESEARCH WAS VERY PRELIMINARY AND IT SORT OF RAISED THE QUESTIONS THAT THE WHOLE NEXT GENERATION OF RESEARCHERS, OF WHICH I'M ONE, HAVE SET OUT TO ANSWER. BUT IT DIDN'T GIVE THE ANSWERS.

MS. PALTROW: NO FURTHER QUESTIONS.

CROSS-EXAMINATION

BY MS. SHOWERS:

Q. DR. FRANK, IF I UNDERSTAND YOUR TESTIMONY, IT'S ALL RIGHT FOR WOMEN TO USE COCAINE DURING THEIR PREGNANCY?

A. I THINK YOU MISINTERPRET ME.

Q. SO YOU WOULD AGREE WITH ME THAT COCAINE USE DURING PREGNANCY SHOULD BE DISCOURAGED?

A. I AGREE.

Q. AND THE USE OF COCAINE PRENATALLY INCREASES THE RISK OF ADVERSE OUTCOMES FOR THE CHILD, CORRECT?

**[FRANK 957]**

A. IT'S ONE OF MANY SUBSTANCES THAT INCREASES THE RISK OF ADVERSE OUTCOMES.
Q. AND YOU TALKED ABOUT DOING RESEARCH ON ANIMALS AND TRANSLATING THAT TO HUMANS. DO YOU ADVOCATE USING HUMANS TO TEST THE EFFECTS OF COCAINE?
A. THAT'S - YOU DON'T - OBVIOUSLY YOU DON'T TEST POTENTIALLY DANGEROUS DRUGS ON HUMANS. PEOPLE TEST THEM ON THEMSELVES, UNFORTUNATELY. I'M NOT TRYING TO DISCREDIT ANIMAL RESEARCH, I'M SIMPLY SAYING THAT EXTRAPOLATION FROM THEIR DATA TO HUMANS HAS TO BE DONE VERY CAUTIOUSLY.
Q. SO THE ANSWER TO MY QUESTION IS: NO, YOU DON'T ADVOCATE TESTING COCAINE ON HUMANS, CORRECT?
A. DO I ADVOCATE RANDOMLY ASSIGNING HUMANS TO GIVE THEM COCAINE, FOR HEAVEN SAKES, NO.
Q. YOU AGREE WITH ME IN 1988 AND 1989 THERE WERE REPORTS IN THE LITERATURE THAT THE USE OF COCAINE DURING PREGNANCY WAS EXPECTED TO BE A PROBLEM OF ENORMOUS PROPORTIONS, CORRECT?
A. BUT - IF THOSE REPORTS WERE READ CRITICALLY -

Q. JUST YES OR NO, DOCTOR. YOU CAN EXPLAIN IT. YES OR NO?
A. THERE WERE - YES, THERE WERE ALL KINDS OF DIRE PREDICTIONS IN THE LITERATURE.
MS. PALTROW: I WOULD LIKE TO LET THE WITNESS ANSWER THE QUESTION.
MS. SHOWERS: SHE ANSWERED IT.
THE COURT: WELL DIDN'T SHE ANSWER THAT ON DIRECT

**[FRANK 958]**

EXAMINATION? DIDN'T SHE EXPLAIN THAT ON DIRECT EXAMINATION?
MS. PALTROW: I DON'T KNOW WHAT SHE IS GOING TO EXPLAIN.
THE COURT: HAVE YOU ALREADY EXPLAINED THAT?
THE WITNESS: I EXPLAINED WHY I THOUGHT THAT THE LITERATURE WAS FLAWED, YOUR HONOR. AND YOU HAD TO BE VERY CAUTIOUS ABOUT INTERPRETATIONS. AND THE DIRE PREDICTIONS THAT WERE MADE WERE BASED ON UNSOUND SCIENCE, I GUESS WOULD BE THE BEST WAY TO PUT IT.
Q. (BY MS. SHOWERS, CONTINUING) SO, DR. FRANK, DO I UNDERSTAND YOU TO SAY THAT YOU DON'T RESPECT DOCTOR IRA CHASNOFF'S WORK?
A. I THINK BECAUSE HE WAS THE FIRST PERSON TO NOTICE

SOMETHING - YES, OF COURSE I RESPECT DR. CHASNOFF. BUT WE DISAGREE ABOUT SOME THINGS.
Q. YOU DISAGREE WITH DR. CHASNOFF?
A. ABOUT SOME THINGS WE DO.
Q. THE PLAINTIFFS' OWN EXPERT, DR. CHASNOFF, CORRECT?
MS. PALTROW: OBJECTION, YOUR HONOR, THIS IS ARGUMENTATIVE AND MISLEADING.
MS. SHOWERS: WITHDRAWN, YOUR HONOR.
Q. (BY MS. SHOWERS, CONTINUING) YOU AGREE WITH ME, DR. FRANK, THAT IN 1988 AND 1989 THERE WAS A MEDICAL REASON TO TEST PREGNANT WOMEN FOR COCAINE USE?
A. I GUESS THE QUESTION IS, WHAT YOU DO YOU MEAN BY MEDICAL

**[FRANK 959]**

REASON? I DON'T THINK I GET IT.
Q. WE TALKED ABOUT IT IN YOUR DEPOSITION. WOULD YOU LIKE TO REFRESH YOUR RECOLLECTION?
A. SURE. I HAVE NEVER EVEN SEEN MY DEPOSITION.
MR. WHERRY: AND READING AND SIGNING WAS NOT WAIVED, I WAS THERE.
A. WHERE DID WE TALK ABOUT THIS NOW. I GUESS I'M TRYING TO FIGURE OUT BY MEDICAL, BUT I PROBABLY UNDERSTOOD IT WHEN YOU ASKED ME BEFORE. WHERE ARE WE?
Q. ON PAGE 35.
A. OKAY.

Q. LINE 24. BUT MY QUESTION IS SIMPLY, WAS THERE ANY MEDICAL EVIDENCE TO SUPPORT THE TESTING OF PREGNANT WOMEN BACK IN THE LATE '80'S?

A. AND I SAID THAT IN FACT THE PEOPLE, THERE WAS GREAT INTEREST IN DETERMINING THE PREVALENCE OF USE, YES. I THINK THAT'S - THERE WAS EPIDEMIOLOGIC.

Q. SO THERE WAS A REASON TO TEST PREGNANT WOMEN FOR COCAINE USE DURING THEIR PREGNANCY?

A. YEAH. I MEAN, I THINK THAT'S RIGHT.

Q. AND AT YOUR HOSPITAL IN FACT YOU TESTED BABIES IF THEY APPEARED JITTERY; IS THAT CORRECT?

A. THAT'S CORRECT.

Q. IF THE - IF THERE WAS A MATERNAL HISTORY OF SUBSTANCE ABUSE?

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

**EXCERPTS FROM TESTIMONY OF JOSEPH GOOD**

**[GOOD 172]**

(TESTIMONY EXCERPT OF JOSEPH GOOD 12-16-96.)

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- JOSEPH C. GOOD, PLF. WITNESS, SWORN.

DIRECT EXAMINATION

BY MR. HOOD:

Q. GOOD AFTERNOON. MR. GOOD, I WANT THE JURY TO KNOW WHO YOU ARE FIRST. JUST A LITTLE BIT ABOUT YOU.

YOU WERE BORN AND RAISED WHERE?

A. I WAS BORN AND RAISED IN COLUMBIA, SOUTH CAROLINA.

Q. ALL RIGHT, SIR. AND YOUR EDUCATIONAL BACKGROUND.

A. I WENT TO PUBLIC SCHOOLS AND WENT TO WOFFORD COLLEGE IN SPARTANBURG AND THEN WENT TO USC LAW SCHOOL. AND GOT OUT OF LAW SCHOOL AND WENT IN THE ARMY AND SERVED AS A QUARTERMASTER. AND GOT OUT IN 1970 AND WORKED FOR THE ATTORNEY GENERAL DAN MCCLOUD IN THE STATE ATTORNEY GENERAL'S OFFICE FOR TWO YEARS. AND I LEFT THERE AND WENT WITH SOUTH

CAROLINA ELECTRIC AND GAS COMPANY AS AN ATTORNEY FOR THEM FOR 13 YEARS. COMING TO THE MEDICAL UNIVERSITY AS THEIR ATTORNEY IN 1987 AROUND SEPTEMBER.

Q. AND YOUR TITLE IS WHAT AT THE MEDICAL UNIVERSITY, MR. GOOD?

A. GENERAL COUNSEL.

Q. AND YOU HAVE HELD THAT TITLE FOR HOW LONG?

A. ABOUT TEN YEARS NOW, SIR.

Q. AND YOU'RE A LICENSED PRACTICING ATTORNEY BY THE STATE OF

**[GOOD 173]**

SOUTH CAROLINA?

A. YES, SIR, I AM.

Q. BUT YOU'RE A FULL-TIME EMPLOYEE; IS THAT CORRECT?

A. YES, SIR, IM A SALARIED EMPLOYEE.

Q. ALL RIGHT. MR. GOOD, THE REASON WE HAVE ASKED YOU TO TESTIFY, I WANT YOU TO EXPLAIN TO THE JURY THE METHOD AND MODE BY WHICH PROTOCOLS AND POLICIES GO THROUGH THE PROCESS OF BECOMING FORMULATED AND ULTIMATELY APPROVED BY THE BOARD THAT RUNS THE MEDICAL UNIVERSITY?

A. YES, SIR. AS Y'ALL KNOW THE MEDICAL UNIVERSITY IS A LARGE PLACE AND GETTING LARGER EVERY DAY. WE HAVE SIX COLLEGES AND WE OPERATE THREE HOSPITALS. ALL OF THE LEGAL AUTHORITY FOR OPERATING THE UNIVERSITY IS IN OUR BOARD OF

TRUSTEES, MANY OF WHICH ARE HERE TODAY, AND YOU WILL MEET SOME OF THEM LATER.

TRUSTEES DELEGATE TO DIFFERENT COLLEGES AND DIFFERENT HOSPITALS THE RESPONSIBILITY TO DEVELOP RULES AND REGULATIONS FOR RUNNING THOSE HOSPITALS. AND WE HAVE TO LEAVE IT TO THE PHYSICIANS WHO KIND OF KNOW BETTER THAN WE DO. IN THIS PARTICULAR INSTANCE THE DEPARTMENT OF PEDIATRICS SAW THAT WE HAD A PROBLEM AND THEY STARTED WORKING ON IT. AND THEY DEVELOPED A POLICY THAT WE HAVE BEEN DISCUSSING IN THIS CASE.

AFTER IT WAS REVIEWED BY THE DEPARTMENT OF PEDIATRICS, IT WENT TO THE EXECUTIVE STAFF OF THE MEDICAL STAFF OF THE MEDICAL UNIVERSITY. THEY'RE THE PHYSICIANS THAT

**[GOOD 174]**

GOVERN THE DAY-TO-DAY RUNNING OF THE HOSPITAL. THEY REVIEWED THE POLICY. THEY I THINK REFINED IT. AND THEN THEY VOTED IN A FORMAL SESSION TO ACCEPT THE POLICY. AND I BELIEVE IT WAS IN NOVEMBER OF 1989 WHEN THEY ADOPTED THE POLICY AS THE OFFICIAL HOSPITAL POLICY.

THEY THEN, IN THE EXECUTIVE COMMITTEE MINUTES, IN THEIR MINUTES, AS THEY NORMALLY DO, SEND IT UP TO THE

GOVERNING BOARD, THE BOARD OF TRUSTEES OF THE MEDICAL UNIVERSITY OF SOUTH CAROLINA. AS IS NORMAL, THEY HAVE TO PUT IT TO A COMMITTEE FOR THEIR REVIEW. IN THIS CASE IT WOULD HAVE BEEN THE HOSPITAL AND PATIENT CARE COMMITTEE WHO THOROUGHLY REVIEWED WHAT THEIR MEDICAL STAFF HAD DONE, APPROVED THE POLICY AND PRESENTED IT TO THE FULL BOARD IN FEBRUARY OF 1990 FOR FORMATION. AND THE FULL BOARD ACKNOWLEDGED IT. AND I THINK SOMEWHERE IN THERE DR. DEL BENE, WHO YOU HAVE HEARD FROM, EXPLAINED IT TO THE BOARD AND TO THE PATIENT - I MEAN HOSPITAL AND PATIENT CARE COMMITTEE.

Q. NOW IN THAT APPROVAL PROCESS THAT YOU HAVE JUST OUTLINED, WAS ANYTHING DONE THAT WAS A DEVIATION OR DIFFERENT FROM THE NORMAL METHOD OF COMING UP WITH THE HOSPITAL PROTOCOL OR POLICY

A. NO, SIR.

Q. WAS THERE ANYTHING THAT WAS DONE IN THE FORMULATION OR THE IMPLEMENTATION OF THIS POLICY WHICH WAS DONE IN A WAY TO DISCRIMINATE?

**[GOOD 175]**

A. NO, SIR.

Q. WAS THIS POLICY FORMULATED AND IMPLEMENTED BY THE MEDICAL

UNIVERSITY AT THE INSISTENCE OF SHIRLEY BROWN?
A. NO, SIR. SHIRLEY IS A NURSE, AND I DON'T MEAN TO BELITTLE HER, BUT SHE DOESN'T HAVE THE DECISION-MAKING POWER FOR THE UNIVERSITY.
Q. ALL RIGHT, SIR. EXPLAIN WHO ACTUALLY GOVERNS - WE UNDERSTAND THAT THE MEDICAL UNIVERSITY HAS SOMETHING LIKE EIGHT THOUSAND EMPLOYEES - WHO GOVERNS THE MEDICAL UNIVERSITY?
A. BY LAW IT IS THE MEMBERS OF THE BOARD OF TRUSTEES.
Q. OKAY.
A. THEY HAVE ALL OF THE LEGAL POWER.
Q. OKAY. AND THEY ARE NAMED IN THIS LAWSUIT; IS THAT CORRECT?
A. YES, SIR.
Q. NOW THERE HAVE BEEN SOME CHANGES SINCE THE LAWSUIT WAS BROUGHT IN THE BOARD OF TRUSTEES. THERE ARE SOME NEW MEMBERS; IS THAT RIGHT?
A. THEY ARE. THEIR TERMS GO OFF AND WE HAVE ONE LAY PERSON AND ONE MEDICAL PERSON FROM EACH DISTRICT, AND IT DOES CHANGE FROM TIME TO TIME.
Q. OKAY. A LETTER WAS PUT INTO EVIDENCE, PLAINTIFF'S EXHIBIT 28, THAT WAS WRITTEN BY YOU. I WANT TO SHOW YOU THE LETTER AND ASK YOU A QUESTION. WAS THIS POLICY SOMETHING THAT.

**[GOOD 176]**

SOLICITOR CONDON WAS INSISTING ON THE MEDICAL UNIVERSITY DOING?

A. NO, SIR, IT WASN'T. YOU KNOW, MAYBE I OUGHT TO EXPLAIN THE RELATIONSHIP. WE'RE A STATE AGENCY, THE MEDICAL UNIVERSITY. AND I, FROM TIME TO TIME, ON A WEEKLY BASIS IN CALLING THE ATTORNEY GENERAL'S OFFICE, I CALL THE LOCAL SOLICITOR'S OFFICE, I CALL LAW ENFORCEMENT, I CALL DSS AND WORK VERY CLOSELY WITH THEM. I THINK OUR PEDIATRICIANS RECOGNIZED THAT WE HAD A PROBLEM. YOU KNOW EVERYBODY THINKS THAT IT CAN'T HAPPEN IN SOUTH CAROLINA, BUT THEY HAD INFORMED ME THAT WE REALLY DID HAVE A PROBLEM.

I THINK IN ANOTHER CORRESPONDENCE I CONTACTED THE STATE ATTORNEY GENERAL'S OFFICE AND SAID, LOOK, I HAVE BEEN READING IN THE NEWS WHAT YOU HAVE BEEN DOING IN GREENVILLE, ARE YOU GOING TO DO THAT IN CHARLESTON? I CONTACTED THE SOLICITOR'S OFFICE AND SAID, YOU KNOW, WHAT ARE Y'ALL GOING TO DO, SHOULD WE GET TOGETHER.

IT APPEARED TO ME, AND WE'VE GOT LAWYERS REPRESENTING THE HOSPITAL, WE'VE GOT LAWYERS REPRESENTING

MOTHERS, BUT WE AIN'T GOT ANY LAWYERS REPRESENTING THE UNBORN CHILD AND SOMEHOW IN MY MIND THESE CHILDREN WERE FALLING THROUGH THE CRACKS. AND EVERYBODY WAS DOING THEIR OWN THING AND IT WASN'T A COORDINATION. AND SO AS I RECALL I CONTACTED OUR LOCAL SOLICITOR AND SAID WHAT ARE Y'ALL DOING AND WHAT CAN WE DO AND SHOULD WE GET TOGETHER AND MEET AND TALK ABOUT

**[GOOD 177]**

THIS.

Q. ALL RIGHT, SIR. AND IN FURTHERANCE OF WHAT YOU JUST SAID, THE ONLY COPY I HAVE IS HIGHLIGHTED. I WILL SUBMIT AN UNHIGHLIGHTED ONE. LET ME HAND YOU THIS. IS THIS THE LETTER?

A. YES, SIR. AUGUST 23, 1989, TO HONORABLE CHARLES CONDON, SOLICITOR.

Q. ALL RIGHT. READ TO THE JURY THE FIRST SENTENCE OF WHAT YOU SAID IN THAT LETTER, PLEASE.

A. DEAR CHARLES, I READ WITH GREAT INTEREST IN SUNDAY'S NEWSPAPER ACCOUNTS OF OUR GOOD FRIEND AND SOLICITOR FOR THE 13TH JUDICIAL CIRCUIT PROSECUTING MOTHERS WHO GAVE BIRTH TO CHILDREN WHO TESTED POSITIVE FOR DRUGS.

Q. OKAY. THAT'S UP IN WHAT COMMUNITY?

A. GREENVILLE.

MR. HOOD: PUT THIS LETTER INTO EVIDENCE.
MR. WHERRY: NO OBJECTION.
MR. HOOD: IT'S ALREADY IN EVIDENCE.
MR. HOOD: IT'S DEFENDANTS' 170.
Q. (BY MR. HOOD, CONTINUING) ALL RIGHT, SIR. READ THE LAST SENTENCE OF THAT LETTER, WHICH IS NOW EXHIBIT 170.
A. PLEASE ADVISE US IF YOUR OFFICE IS ANTICIPATING FUTURE CRIMINAL ACTION AND WHAT, IF ANYTHING, OUR MEDICAL CENTER NEEDS TO DO TO ASSIST YOU IN THIS MATTER.
Q. ALL RIGHT, SIR. NOW, WHEN THE PEDIATRIC DOCTORS CAME TO YOU AND ASKED ABOUT THIS PROBLEM AND WHAT TO DO, EXPLAIN TO

**[GOOD 178]**

THE JURY WHAT YOU AS THE ATTORNEY FOR THEM AND THE OTHER DOCTORS AT THE MEDICAL UNIVERSITY UNDERTOOK TO DO?
A. I THINK THEIR CONCERN, THEY CAME TO ME AND TOLD ME WHAT THEY HAD FOUND AND WHAT THEY WERE EXPERIENCING. WHAT WE WANTED TO DO WAS DEVISE A POLICY, OR WHAT THEY WANTED TO DO WAS DEVISE A POLICY.
MR. WHERRY: OBJECTION, YOUR HONOR, THAT'S HEARSAY WHAT THEY WANTED TO DO.
THE COURT: GO AHEAD.

A. I'LL REPHRASE WHAT I WANTED TO DO AND WHAT I ADVISED THE PHYSICIANS TO DO.
Q. ALL RIGHT, SIR.
A. IS TO DEVELOP A POLICY TO GIVE THESE BABIES A CHANCE.
AND I SUGGESTED TO THEM THE CARROT-AND-STICK METHOD. THAT IF VOLUNTARY TREATMENT WAS NOT GOING TO WORK, THAT WHAT WE OUGHT TO DO IS GIVE THEM SOME REWARD SEEKING TREATMENT AND SOME PUNISHMENT IF THEY DIDN'T. AND THAT'S WHAT I MEANT BY THE CARROT AND STICK.
I WANTED A POLICY AND WAS VERY SENSITIVE TO THIS, THAT DOCTORS WOULD HAVE TO TELL ME, I'M A LAY PERSON, OF WHO SHOULD BE TESTED. AND I WAS INSISTENT THAT POLICY BE NONDISCRIMINATORY AND APPLIED THROUGHOUT THE UNIVERSITY AND HOPEFULLY AT THE OTHER AREA HOSPITALS. WE HAD NO LEGAL CONTROL TO MAKE OTHER HOSPITALS LIKE ROPER AND SAINT FRANCIS DO ANYTHING, BUT WE WERE THE STATE MEDICAL UNIVERSITY AND I

**[GOOD 179]**

FELT LIKE WE OUGHT TO TAKE THE LEAD IN THIS THING.
Q. OKAY. AND SO THEN WHEN YOU WROTE YOUR LETTER, PLAINTIFF'S EXHIBIT 28 ON DECEMBER THE 19, 1989, AND THEN THE

THIRD PARAGRAPH REFERRED TO A MEETING. IS THIS SOMETHING THAT WAS ORGANIZED BY YOU, MR. GOOD?

A. I PROBABLY HAD SUGGESTED THAT, TO BE TRUTHFUL WITH YOU THAT WE ALL COME TOMORROW. AND I THINK WE CAME TOGETHER AT THE MEDICAL UNIVERSITY BECAUSE IT WAS A CENTRAL PLACE. AND I REMEMBER GOING DOWN AND MEETING IN A BIG ROOM WITH REPRESENTATIVES FROM CHARLESTON SUBSTANCE ABUSE, SOME SOCIAL WORKERS, I THINK NURSE BROWN WAS THERE, AND THE SOLICITOR'S OFFICE WAS REPRESENTED AND LAW ENFORCEMENT WAS REPRESENTED, TO MAINLY SAY LET'S TALK ABOUT WHAT EACH OTHER IS DOING AND WHY THIS THING ISN'T WORKING OR HOW WE CAN MAKE IT WORK BETTER.

Q. REFERRING TO THE SECOND PAGE OF THAT LETTER WHERE YOU SAY THIS IS NOT A PERFECT PROGRAM, AND YOU GO THROUGH YOUR THOUGHTS ABOUT IT AT THAT TIME, DECEMBER OF '89, WAS THE POLICY EVOLVING AT THIS POINT?

A. IT WAS BRAND NEW. WE WERE BRAINSTORMING TO SEE WHAT WOULD BE THE BEST METHOD. I'M NOT A CRIMINAL LAWYER. OF COURSE, MY BOSS IS IN THE BACK OF THE ROOM, WOULD TELL YOU I'M NOT MUCH OF A LAWYER AT ANYTHING. I'M CERTAINLY NOT A CRIMINAL LAWYER. I WAS BEING A DEVIL'S ADVOCATE AND I WAS

INQUISITIVE BY NATURE, WHAT ABOUT THIS WHAT ABOUT THAT, WHAT - HOW DOES CRIMINAL LAW WORK ON THIS OR THAT, AND WE WERE

**[GOOD 180]**

WRITING BACK AND BANTERING THE IDEA AROUND, YOU KNOW, TO COME UP WITH THE VERY BEST.

Q. AND WITH REGARD TO THE ADEQUACY OF THE PATIENT'S CONSENT TO HAVE A DRUG SCREEN DONE, THE INFORMED CONSENT OF THE PATIENTS, THE PATIENT WHO TESTED POSITIVE, GOING THROUGH THIS PROGRAM, SHOWN THE VIDEOTAPE AND COUNSELING AND SO FORTH, REFERRED TO DSS FOR COUNSELING, DID YOU CONSIDER THE WAY IT WAS SET UP TO BE ADEQUATE?

A. I DID.

Q. AND ARE YOU FAMILIAR -

MR. WHERRY: OBJECTION, YOUR HONOR. THAT'S AN EXPERT OPINION ON THE LAW.

THE COURT: WHAT WAS THE QUESTION AGAIN?

MR. HOOD: DID YOU CONSIDER IT TO BE ADEQUATE?

THE COURT: WHAT TO BE ADEQUATE?

MR. HOOD: THE WAY THE POLICY WAS SET UP FROM THE STANDPOINT OF INFORMED CONSENT TO THE PATIENT WITH REGARD TO THE GIVING OF THE INFORMED CONSENT TO HAVE THE DRUG TEST

GIVEN, URINE DRUG SCREEN OBTAINED AND SO FORTH.

THE COURT: ALL RIGHT, SIR. I'LL BE GLAD TO HEAR YOU

MR. WHERRY: I THINK THAT THAT IS AN OPINION ON THE LAW. INFORMED CONSENT IS SOMETHING THAT YOU WILL CHARGE THE JURY ABOUT AND WHAT IT MEANS AND WHAT IS NECESSARY AND WHAT IS ADEQUATE. TO HAVE THIS WITNESS GIVE AN OPINION THAT HE THINKS

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**[GOOD 185]**

SO MUCH, I'M REMINDED OF CARNAC. REMEMBER JOHNNY CARSON, HE DIDN'T HAVE TO KNOW THE QUESTION, HE COULD GIVE YOU THE ANSWER. I THINK HE CAN PROBABLY DO THAT.

GO AHEAD.

MR. HOOD: YES, SIR.

Q. (BY MR. HOOD, CONTINUING) THE SOLICITOR, AS YOU MENTIONED IN YOUR LETTER, WAS BROUGHT IN AT THIS MEETING. WHY?

A. MR. HOOD, AS I STATED BEFORE, I'M NOT A CRIMINAL LAWYER. THE SOLICITOR IS A PEOPLES' LAWYER. HE IS A CRIMINAL LAWYER. I BROUGHT HIM IN TO ADVISE ALL OF US ON WHAT THE LAW WAS AND MAKE SURE THE POLICY WAS ACCEPTABLE. APPROPRIATE.

Q. AND DID YOU - AND DID THE MEDICAL UNIVERSITY FOLLOW WHAT THE SOLICITOR RECOMMENDED?
A. WE DID, SIR.
Q. AND DID THE SOLICITOR RECOMMEND REPORTING TO LAW ENFORCEMENT?
MR. WHERRY: OBJECTION, HEARSAY.
THE COURT: WELL, IT'S LEADING. YOU SAID DID THE SOLICITOR RECOMMEND WHAT. YOU CAN ASK HIM WHAT, IF ANYTHING, DID THE SOLICITOR RECOMMEND.
MR. HOOD: THANK YOU. WOULD YOU ANSWER THE JUDGE'S QUESTION.
MR. WHERRY: AND I OBJECT TO YOUR QUESTION RESPECTFULLY, ON THE GROUNDS OF HEARSAY. THE STATEMENT MADE

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**[GOOD 187]**

I'LL LET HIM ANSWER THE QUESTION.
A. WHAT THE SOLICITOR DID WAS ADVISE ALL OF US AND HAVE INPUT INTO DEVELOPING AND INFORMING US WHAT THE PRESENT LAW REQUIRED AS FAR AS REPORTING WENT AND WHEN WE WOULD BE LEGALLY OBLIGATED TO REPORT A VIOLATION.
Q. AND DID THE MEDICAL UNIVERSITY FOLLOW THAT ADVICE?
A. WE DID, SIR.
Q. IN YOUR LETTER THAT WE REFERRED TO DECEMBER 19, '89, YOU

REFFRRED TO A PROFILE IN THE LAST PARAGRAPH OF THE SECOND PAGE. WHAT ARE YOU REFERRING TO WHEN YOU REFER TO A PROFILE?

A. WHAT I WANT -- NOT JUST WHAT I WANTED, BUT WHAT I ASKED OR SUGGESTED OR RECOMMENDED TO THEM, I WANTED A POLICY THAT WOULD BE FAIR. I WANTED A POLICY THAT WOULD BE UNIFORM. I WANTED TO KNOW HOW THEY WERE GOING TO SELECT WHO WOULD BE TESTED. AND I TURNED TO THE DOCTORS AND SAID YOU NEED TO COME UP WITH A RACE NEUTRAL, NONDISCRIMINATORY POLICY. WHATEVER YOU CALL IT, I DON'T KNOW MEDICINE, BUT YOU COME DOWN WITH THE ELEMENTS THAT ANYBODY WALKS IN HERE, BE THEY BLACK, WHITE, PURPLE, GREEN, RICH, POOR, THAT IF THEY HIT THE INDICATORS THAT YOU'RE GOING TO TEST THEM, AND THAT'S THE ONLY WAY TO DO IT, AND WE'RE GOING TO DO IT ACROSS THE BOARD. AND THEY WERE ALL IN FULL AGREEMENT.

Q. WAS THE POLICY FOLLOWED IN THAT WAY?

A. TO MY KNOWLEDGE IT WAS IN EVERY CASE.

Q. CONTINUE IN THAT SAME SENTENCE OF THE LAST PARAGRAPH YOU

**[GOOD 188]**

REFERRED TO, BLACK INDIGENT MOTHERS. WHAT ARE YOU REFERRING TO, THERE, MR. GOOD?

A. I WAS RAISED TO BELIEVE THAT NOT ONLY HAS IT GOT TO BE RIGHT, IT'S GOT TO LOOK RIGHT. WHAT I WAS CONCERNED ABOUT AT THAT TIME THE DEMOGRAPHICS OR THE NUMBER OF PEOPLE THAT WE SERVED AT OUR HOSPITAL, THERE WERE MORE AFRICAN-AMERICANS SERVED, I THINK WE DO THE MAJORITY OF THAT IN THIS AREA OF THE STATE, AND I WANTED TO MAKE DARN SURE THAT IF MORE BLACK WOMEN WERE CAUGHT IN THIS THING THAN WHITE, THAT THERE WAS A MEDICAL REASON FOR IT. THAT NO ONE COULD SAY, OH, THAT'S DISCRIMINATORY, YOU SET OUT TO GET SOMEBODY. AND THAT WAS MY CONCERN. I WAS SENSITIVE TO THAT.

Q. WAS THERE ANY REFUSAL OF TREATMENT TO THESE INDIVIDUALS UNDER THE POLICY?

A. NONE.

Q. AND WHEN THEY WERE REFERRED TO CHARLESTON COUNTY SUBSTANCE ABUSE, WHAT WAS THE REASON FOR THAT?

A. WELL, THAT WAS THE CARROT AND STICK. WHAT OUR CONCERN WAS, THIS WAS NOT SUPPOSED TO BE A PUNITIVE POLICY WHERE WE WENT OUT AND PUNISHED PEOPLE FOR DOING SOMETHING, EVEN THOUGH WE KNEW THE ACTIVITY WAS ILLEGAL. WHAT WE WERE TRYING TO DO IS GIVE THOSE BABIES A CHANCE TO BE BORN NORMAL.

AND WHAT WE WERE TELLING THE MAMAS IS THAT, LOOK,

WE'RE GOING TO TRY TO HELP YOU, BUT OUR MAIN CONCERN FRANKLY IS THAT UNBORN BABY. IF YOU WILL GO TO CHARLESTON SUBSTANCE

**[GOOD 189]**

ABUSE, YOU WILL LET THEM HELP YOU, YOU CAN'T KICK THIS ON YOUR OWN YOU NEED PROFESSIONAL HELP, IF YOU MAKE APPOINTMENTS THERE, IF YOU GO TO PRENATAL CARE AND GIVE THAT BABY A CHANCE TO BE BORN HEALTHY, WE'RE GOING TO FORGET ABOUT ALL OF THIS OTHER STUFF. THAT WAS THE CARROT. YOU KNOW, IF YOU GIVE YOUR BABY A CHANCE, LET'S WIPE THE SLATE CLEAN AND FORGET ABOUT IT. ON THE OTHER HAND IF YOU PERSIST IN DOING THAT, WE GOT TO TAKE SOME ACTION, WE GOT TO FORCE YOU INTO TREATMENT OR WE GOT TO, LORD FORBID, PUT YOU IN JAIL WHERE YOU CAN'T HAVE THOSE DRUGS UNTIL THAT BABY WAS BORN.

Q. HAD WOMEN BEEN ARRESTED AT THE MEDICAL UNIVERSITY BEFORE AT THIS POLICY?

A. I THINK PROBABLY THEY HAVE. THE PROBLEM DIDN'T COME UP OVERNIGHT.

Q. AND WAS THE ADOPTION OF THIS POLICY WITHIN THE ESTABLISHED NORMS OF THE MEDICAL UNIVERSITY?

A. IN MY OPINION, YES, SIR.

Q. THERE IS A REFERENCE TO THE POLICY TO CHAIN OF CUSTODY.

WHAT IS THAT ABOUT?
A. THAT'S FOR THE MEDICAL CHAIN OF CUSTODY.
Q. DOES THE MEDICAL UNIVERSITY TREAT PATIENTS WHO COME FROM COUNTY JAIL FROM PRISON WHO NEED MEDICAL ATTENTION?
A. YES, SIR. TREAT EVERYONE.
Q. AND ARE SOME OF THOSE, UNFORTUNATELY, PREGNANT WOMEN?
A. THEY ARE

**[GOOD 190]**

Q. IF A WOMAN GOES TO THE EMERGENCY ROOM OF THE MEDICAL UNIVERSITY AND HAS BEEN THE SUBJECT OF ABUSE IN THE FAMILY OR WHATEVER, DOES THE MEDICAL UNIVERSITY HAVE A WAY FOR THE EMERGENCY ROOM DOCTOR TO DEAL WITH THAT?
A. WE HAVE A POLICY AND WE'RE REQUIRED BY LAW TO REPORT THAT. SAME WITH GUNSHOTS, KNIFE WOUNDS.
Q. AND WAS THIS POLICY IN THE SAME VEIN?
A. YES, SIR.
Q. AND DID IT THEREBY MEET THE -
MR. WHERRY: OBJECTION, LEADING.
Q. (BY MR. HOOD, CONTINUING) DID THIS POLICY MEET THE NORMS AND STANDARDS OF THE MEDICAL UNIVERSITY?
MR. WHERRY: OBJECTION, LEADING.

THE COURT: IT IS LEADING. I'LL PERMIT IT.

MR. HOOD: JUST A MINUTE.

Q. (BY MR. HOOD, CONTINUING) THERE IS A PAMPHLET IN EVIDENCE ABOUT PATIENTS AND SO FORTH. IS THERE A CAVEAT WITH REGARD TO PATIENT'S RIGHTS WITH REGARD TO REQUIREMENTS WITH REGARD TO LAW?

MR. HOOD, I REALLY DON'T KNOW. IT'S BEEN AWHILE SINCE I LOOKED AT IT. I WOULD IMAGINE THAT IT'S STANDARD THAT WE DO TELL THEM THAT ALL OF THIS IS SUBJECT TO THE LAW.

Q: AND MY LAST QUESTION THERE WAS AN OBJECTION TO, WE NEVER GOT AN ANSWER.

DID THIS POLICY MEET THE STANDARD AND NORMS LIKE

**[GOOD 191]**

OTHER POLICIES? DID THE INTERAGENCY POLICY WITH COCAINE MOTHERS MEET THE NORMAL STANDARDS AND NORMS OF THE MEDICAL UNIVERSITY?

A. IN MY OPINION IT DID.

MR. HOOD: THANK YOU VERY MUCH.

THE COURT: AND THE QUESTION IS LEADING. BUT IT SAYS UNLESS NECESSARY. AND I DON'T KNOW HOW HE CAN ASK THAT QUESTION WITHOUT GOING THROUGH EVERY SINGLE STANDARD AND NORM,

WHICH TAKES SUCH A GREAT AMOUNT OF TIME, SO I'LL I PERMIT THE LEADING QUESTION.

CROSS-EXAMINATION.

CROSS-EXAMINATION

BY MR. WHERRY:

Q. MR. GOOD, YOU SAID THAT THE PEDIATRIC DEPARTMENT CAME TO YOU WITH THE PROBLEM ABOUT SUBSTANCE-ABUSING PREGNANT WOMEN; IS THAT RIGHT?

A. YES, SIR.

Q. ACTUALLY, MR. GOOD, THE FIRST TIME - THE FIRST TIME THAT THIS ISSUE CAME UP WAS YOU AND SHIRLEY BROWN WALKING INTO THE HOSPITAL TOGETHER ONE MORNING AND SHIRLEY TOLD YOU ABOUT A PROGRAM SHE HEARD ON THE RADIO DRIVING INTO WORK; ISN'T THAT RIGHT?

A. I VAGUELY REMEMBER TALKING -

Q. SO ACTUALLY IT WAS SHIRLEY BROWN WHO FIRST SUGGESTED THIS POLICY AND FIRST BROUGHT THIS PROBLEM TO YOU, ISN'T THAT

**[GOOD 192]**

RIGHT?

A. I DON'T THINK THAT'S CORRECT, SIR.

Q. SO WHAT YOU'RE SAYING IS THAT THE PEDIATRIC DEPARTMENT HAD CONTACTED YOU BEFORE SHIRLEY BROWN TALKED TO YOU THAT MORNING WALKING INTO WORK?

A. POSSIBLY. I HONESTLY DON'T REMEMBER, BUT I WOULD SAY PROBABLY, YES.

Q. WHO IN THE PEDIATRICS DEPARTMENT WAS IT THAT CAME TO YOU REPORTING - REPORTING THAT THE DEPARTMENT WAS CONCERNED?
A. I BELIEVE IT WAS DR. HORGER. I'M NOT SURE. BUT I THINK IT WAS.
Q. DID YOU EVER CONFIRM ANYTHING WITH DR. HORGER IN WRITING ABOUT THAT CONTACT?
A. I DON'T RECALL THAT I DID, SIR.
Q. IN FACT, WHAT YOU DID, WHETHER IT WAS DR. HORGER OR WHETHER IT WAS SHIRLEY BROWN YOU - WHO FIRST CONTACTED YOU, YOU WROTE A LETTER, WHICH IS IN EVIDENCE HERE, TO MR. CONDON INVITING MR. CONDON TO COOPERATE WITH THE HOSPITAL IN THE PROSECUTION OF SUBSTANCE-ABUSING PREGNANT WOMEN; ISN'T THAT FAIR?
A. NO, SIR. I INVITED HIM TO COME AND SHARE WITH US. I DID NOT THINK THAT ANYTHING WAS BEING DONE, THAT ALL OF THESE AGENCIES WERE GOING DIFFERENT WAYS AND THESE POOR BABIES WERE FALLING THROUGH THE CRACKS, I WANTED HIM TO COME SHARE WITH US WHAT HE WAS DOING AND WHAT HE PLANNED TO DO. JUST LIKE I

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**[GOOD 194]**

HIPPOCRATIC OATH TO DO NO HARM, FAIR?
A. YES.

Q. DID YOU VIEW YOURSELF, MR. GOOD, AS AN ARM OF THE PROSECUTOR'S OFFICE?
A. COUNSEL, THE ANSWER IS NO. WE REPORT KNIFE WOUNDS, GUNSHOT WOUNDS, WE REPORT ABORTIONS, STILL DEATHS AND SYPHILIS AND TUBERCULOSIS. ALL OF THESE THINGS ARE MANDATED BY LAW AS IS PART OF RUNNING THE HOSPITAL. THIS IS NO DIFFERENT.
Q. SO I TAKE IT, MR. GOOD, THE ANSWER TO MY QUESTION IS: NO. THE QUESTION WAS: DID YOU SEE YOURSELF AS AN ARM OF THE PROSECUTION. I TAKE IT YOUR ANSWER IS NO FOR WHATEVER YOUR REASONS?
A. I'M NOT SAYING THAT. WE ARE A STATE AGENCY. WE ARE THE STATE'S MEDICAL UNIVERSITY. THE OTHER AGENCIES YOU MENTIONED ARE ALSO ARMS OF THE STATE.
Q. DO YOU SEE A DIFFERENT ROLE FOR A STATE HOSPITAL AS OPPOSED TO PRIVATE HOSPITAL?
A. YES, SIR, VERY DEFINITELY.
Q. YOU SO YOUR ROLE AS A STATE HOSPITAL, HAVING PERHAPS A STRONGER DUTY TO COOPERATE WITH PROSECUTION THAN A PRIVATE HOSPITAL WOULD HAVE?
A. NO, SIR. I WOULD HOPE THAT ALL WOULD.
Q. HOW DO YOU SEE A STATE HOSPITAL ROLE BEING DIFFERENT, MR. GOOD?
A. AS THE STATE'S MEDICAL UNIVERSITY, I THINK THE THOUGHT

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**[GOOD 202]**

Q. SO THE PHYSICIANS HAD DISCRETION AS TO WHETHER TO REPORT PEOPLE TO THE SOLICITOR'S OFFICE AND THE POLICE?

A. THE DISCRETION COMES FROM THE POLICY. THE POLICY MANDATED TO THEM, AS DID THE LAW, WHEN THEY WERE TO REPORT. NOW FROM THAT POINT OF VIEW THEY HAD NO DISCRETION.

Q. YOU SAID IN YOUR DECEMBER 19TH LETTER THAT YOU WERE NOT HAPPY WITH THE CONSENT FORM THAT THE PATIENTS SIGNED. IS THAT FAIR?

A. AT THAT TIME, YES, SIR.

Q. WELL, DID YOU GET HAPPY WITH IT LATER ON?

A. YES, SIR. I WILL EXPLAIN THAT TO YOU. AGAIN -

Q. I'LL ASK YOU TO EXPLAIN IT IF I NEED THE EXPLANATION, I JUST WANTED TO UNDERSTAND.

MR. HOOD: IF THE COURT PLEASE.

THE COURT: I THINK HE HAS GOT A RIGHT TO EXPLAIN IT. HE ANSWERED YOUR QUESTION AND HE CAN EXPLAIN IT.

THE WITNESS: THANK YOU.

A. COUNSEL, IN A PERFECT WORLD, AND I'M OVERLY CAUTIOUS AND KIND OF A KNITPICKER ABOUT THAT, I WOULD LIKE TO SEE THE

MOTHER SIGN AN INDEPENDENT CONSENT FORM LAWYERS ARE LIKE

ONCE THE CHILD IS BORN, I WOULD LIKE ANOTHER CONSENT FORM THAT, WE LIKE TO FILL OUR FILES WITH CONSENT FORMS. AND IN A PERFECT SOCIETY, WE WOULD DO THAT. BUT, YOU KNOW, WE WERE NOT WORKING UNDER PERFECT CIRCUMSTANCES.

Q. WHY? IT WAS DIFFICULT TO DRAW UP A NEW FORM?

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**[GOOD 206]**

Q. SO, IS IT STILL YOUR TESTIMONY, TODAY, THAT SHIRLEY BROWN WAS NOT ONE OF THE FOUNDERS?

A. SHE WAS ONE OF THE PRINCIPALS. I CONSIDER MYSELF ONE OF THE PRINCIPALS, TOO, IN THE EVOLUTION OF THAT POLICY. SO BOTH OF US WOULD BE FOUNDERS, ALONG WITH DR. NEWMAN, DR. HORGER AND THE OTHER AGENCIES INVOLVED, YES, SIR.

Q. YOU WROTE TO A SOUTH CAROLINA SENATOR, SENATOR RHODES AND CALLED SHIRLEY BROWN A FOUNDER, DIDN'T YOU?

A. YES, SIR.

Q. WERE YOU KIDDING WHEN YOU WROTE THAT, SIR?

A. NO, SIR.

Q. NOW, WITH RESPECT TO THE CONSENT FORMS, IS IT YOUR POSITION THAT THE, QUOTE, INFORMED CONSENT FORM ADEQUATELY

NOTIFIED THE PLAINTIFFS THAT THEIR MEDICAL INFORMATION MIGHT BE TURNED OVER TO THE POLICE?
A. YES, SIR.
Q. AND IT WAS THE SAME CONSENT FORM USED BEFORE THE INTERAGENCY POLICY, WASN'T IT?
A. I BELIEVE THAT'S CORRECT.
Q. AND IT'S THE SAME CONSENT FORM SIGNED BY EVERY PATIENT THAT COMES INTO MUSC, FAIR?
A. FAIR.
Q. AND THEY CAME INTO MUSC BEFORE THE POLICY?
A. YES, SIR.
Q. AND SO IS IT YOUR POSITION THAT EVERY PATIENT THAT COMES

**[GOOD 207]**

INTO MUSC AND IS TREATED BY THAT HOSPITAL CONSENTS TO THEIR MEDICAL RECORDS AND INFORMATION BEING TURNED OVER TO THE POLICE?
A. IF IT'S REQUIRED BY LAW. AND IT WAS IN THIS CASE, JUST LIKE ABUSE OF A CHILD OR A GUNSHOT WOUND OR A STAB WOUND, YES, SIR.
Q. MR. GOOD I TAKE IT THAT YOU WERE INSTRUMENTAL IN DRAWING OR APPROVING THE CONSENT FORMS, RIGHT?
A. I THINK I APPROVED THEM, YES, SIR.
Q. THEY DON'T SAY ANYTHING ABOUT IT'S REQUIRED BY LAW, DO THEY?
A. THAT'S A GIVEN, SIR.

Q. WHETHER OR NOT IT'S A GIVEN, MR. GOOD, THEY DON'T SAY IF REQUIRED BY LAW, DO THEY?
A. THEY DO NOT SAY THAT.
Q. AND, MR. GOOD, ONE OF THE THINGS THAT YOU AND I DO AS LAWYERS IS TO INFORM PEOPLE ABOUT WHAT IS REQUIRED BY LAW, DON'T WE?
A. I DON'T KNOW HOW TO ANSWER THAT.
Q. OKAY. ONE OF THE REASONS WE HAVE LAWYERS IS TO EXPLAIN THE LAW TO PEOPLE, FAIR?
A. YES, SIR. TO CLIENTS, YES, SIR.
Q. AND TO PEOPLE WHO ARE GIVING UP THEIR RIGHTS IN OUR INSTITUTIONS, LIKE OUR HOSPITAL?
A. MY ADVICE IS ONLY TO THE MEDICAL UNIVERSITY AND THEIR

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**[GOOD 212]**

A. YES, SIR.
Q. WHEN YOU SAY WE HAVE GOT TO TAKE SOME ACTION EVEN IF IT MEANT PUTTING THEM IN JAIL, "WE" BEING THE MEDICAL UNIVERSITY?
A. NO, SIR. WHAT THAT MEANT WAS REPORTING THAT EVEN IF IT MEANT ULTIMATELY THAT SOMEBODY WOULD HAVE TO GO TO JAIL.
Q. SO YOU WOULD AGREE WITH ME THAT THE ULTIMATE ACT CAUSING THE JAIL WAS THE REPORTING BY THE MEDICAL UNIVERSITY?
A. NO, SIR. I'M NOT PLAYING WITH WORDS. WE WERE REQUIRED

BY STATE LAW TO REPORT VIOLATIONS. SOMETIMES THOSE VIOLATIONS, AS A LAST RESULT, ENDED UP IN INCARCERATION OF THESE LADIES. THAT'S ALL I'M SAYING.

Q. SIR, THE REPORTING OF GONORRHEA AND SYPHILIS YOU INDICATED, THOSE REPORTS DON'T GO TO THE POLICE, DO THEY?

A. THE GUNSHOTS AND KNIFE WOUNDS WOULD, BUT THE GONORRHEA AND ALL WOULD GO TO THE HEALTH DEPARTMENT.

Q. I DIDN'T ASK YOU ABOUT GUNSHOTS AND KNIVES, DID I?

A. I'M SORRY.

Q. DO YOU UNDERSTAND RESPONSIVE?

A. YES, SIR.

Q. SO THE ANSWER TO MY QUESTION I TAKE IT IS, NO, THE REPORTS OF GONORRHEA AND SYPHILIS DO NOT GO TO THE POLICE?

A. TO THE HEALTH DEPARTMENT, YES, SIR.

Q. AND MOTHERS, PREGNANT WOMEN ABUSING ALCOHOL, THOSE REPORTS WENT TO THE DIVISION OF SOCIAL SERVICES, DIDN'T THEY?

A. I DON'T KNOW, SIR.

**[GOOD 213]**

Q. YOU KNOW WHETHER THERE WAS A HOSPITAL POLICY ON THAT, MR GOOD, AS GENERAL COUNSEL?

A. ON ALCOHOL ABUSE?

Q. BY WOMEN WHO WERE PREGNANT CAUSING POTENTIAL FETAL HARM?

A. I DON'T RECALL.

Q. SIR, WITH RESPECT TO THE INTERAGENCY POLICY - WELL, FIRST OF ALL, YOU WERE HERE I THINK IT WAS LAST TUESDAY WHEN DR. DEL BENE TESTIFIED?

A. NO, SIR.

Q. WOULD YOU AGREE WITH ME THAT ONE OF THE AIMS OF THE POLICY, ONE OF THE IMPORTANT AIMS OF THE POLICY WAS TO PROTECT THESE CHILDREN TO BE BORN FROM THIS PREGNANCY AND FUTURE PREGNANCIES?

A. I WOULD AGREE WITH YOU THAT THE MAIN OBJECT IN MY MIND WAS TO PROTECT OR GIVE THE CHILD A CHANCE TO BE BORN NORMAL IN THIS PREGNANCY.

Q. HOW ABOUT FUTURE PREGNANCIES, GETTING THE MOTHER OFF DRUGS SO FUTURE PREGNANCIES AND THIS CHILD WOULD NOT BE IN A HOME WITH A SUBSTANCE-ABUSING APPARENT?

A. RIGHT, SIR. IF, ACCORDING TO THE POLICY THE MOTHER WOULD BE REFERRED FOR PRENATAL CARE, THAT WOULD HELP THE EXISTING CHILD. BUT SHE ALSO WAS REFERRED TO CHARLESTON SUBSTANCE ABUSE, WHICH WOULD HELP HER KICK THE HABIT, WHICH IN TURN WOULD PREVENT RECURRENCE OF THIS EVENT IN THE FUTURE WITH OTHER CHILDREN.

**[GOOD 214]**

Q. FATHERS OF BABIES BORN AT MUSC, THE FATHERS ABUSING CRACK COCAINE WERE NOT REPORTED TO THE LOCAL POLICE, WERE THEY, BY THE HOSPITAL?

A. CAN I ANSWER AND THEN EXPLAIN THAT. NO. THE FATHER WAS NOT CARRYING THE BABY. THE FATHER WAS NOT CONTINUING THE INJURY OF THE CHILD. THE EXPECTANT MOTHER, BY CONTINUING TO TAKE DRUGS, WAS CONTINUING THE INJURY TO THE CHILD. WE WANTED TO PUT A STOP TO THAT. THE FATHER WAS OUT OF THE PICTURE, SO TO SPEAK.

Q. THE FATHER WAS NOT OUT OF THE HOME, THOUGH, WAS HE?

A. OH, I DON'T KNOW.

MR. WHERRY: NOW, SIR, LET ME HAVE THIS LETTER MARKED FOR IDENTIFICATION.

DEPUTY CLERK: PLAINTIFFS EXHIBIT NUMBER 259.

MR. WHERRY: THANK YOU.

Q. (BY MR. WHERRY, CONTINUING) SHOWING YOU WHAT HAS BEEN MARKED PLAINTIFF'S EXHIBIT 259 FOR IDENTIFICATION, YOU RECEIVED THAT LETTER, DIDN'T YOU?

A. COULD I HAVE A MOMENT TO READ IT TO MYSELF.

Q. SURE.

A. YES, SIR.

Q. AND THAT WAS A LETTER THAT LED TO THE ORIGINAL MEETING FROM WHICH THE POLICY DEVELOPED, FAIR?

A. I WOULD THINK SO, YES, SIR.

MR. WHERRY: YOUR HONOR, I MOVE THIS INTO EVIDENCE.

**[GOOD 215]**

THE COURT: HAVE YOU SEEN IT?
MR. HOOD: I PROVIDED THEM WITH A COPY.
THE COURT: ANY OBJECTION.
MR. HOOD: THEY DID NOT DESIGNATE IT.
THE COURT: ANY OBJECTION?
MR. HOOD: IT WASN'T DESIGNATED AS A TRIAL EXHIBIT BEFORE HE JUST HANDED IT TO THE WITNESS. THAT'S OUR OBJECTION.
THE COURT: LET ME SEE IT.
OBJECTION OVERRULED.
MR. WHERRY: THANK YOU, SIR.
Q. (BY MR. WHERRY, CONTINUING) MR. GOOD, YOU HAD OTHER CONCERNS ON BEHALF OF THE HOSPITAL AS TO HOW THE POLICY WAS WORKING, DIDN'T YOU, WITH RESPECT TO THE CONFIDENTIALITY OF PATIENTS' RECORDS?
A. AT ONE POINT I WAS CONCERNED ABOUT WHETHER WE WOULD BE TURNING COMPLETE MEDICAL FILES OVER TO THE POLICE, THAT DID CONCERN ME.
Q. AND THAT CONCERN WAS A CONCERN OF CONFIDENTIALITY, WASN'T IT.
A. YES, SIR.
Q. AND YOU WROTE, DIDN'T YOU, TO THE POLICE DEPARTMENT

EXPRESSING THAT CONCERN AND TELLING THEM HOW IN YOUR OPINION TO SOLVE IT?

A. CAN I ANSWER AND THEN EXPLAIN. YES. WHAT I THINK THE

**[GOOD 216]**

LETTER YOU'RE TALKING ABOUT, THEY HAD AN INTERPRETATION OFFICE MEMORANDUM THAT THEY WERE KIND ENOUGH TO SEND ME A COPY OF. IT RAISED A NUMBER OF QUESTIONS IN MY MIND, AND BEING THE DEVIL'S ADVOCATE, I INQUIRED AS TO WHETHER WE WOULD BE EXPECTED TO TURN MEDICAL RECORDS OVER. AND IF SO, WOULDN'T A SUBPOENA BE REQUIRED OR SOME OTHER COURT RULING TO PROTECT THE UNIVERSITY. I WAS LATER TOLD THAT THAT WOULDN'T BE THE CASE, THAT WE WOULD NOT BE TURNING THOSE RECORDS OVER TO THE POLICE. SO MY FEARS EVAPORATED ON THAT POINT.

Q. IS IT YOUR TESTIMONY, SIR, THAT MEDICAL INFORMATION, FOR INSTANCE A COPY OF THE URINE DRUG SCREEN, WAS NOT TURNED OVER BY THE MEDICAL UNIVERSITY TO THE POLICE?

A. I DON'T RECALL.

Q. SIR, IS IT YOUR UNDERSTANDING THAT THE RESULTS OF URINE DRUG SCREENS WERE NOT COMMUNICATED TO THE CHARLESTON POLICE BY SHIRLEY BROWN WHEN SHE CALLED TO REPORT THE POSITIVE DRUG

SCREEN?
A. OH, THAT'S RIGHT, YES.
Q. AND IT IS YOUR RECOLLECTION, ISN'T IT, SIR, THAT A COPY OF THE UDS WAS GIVEN TO THE POLICE OFFICER WHO CAME TO THE HOSPITAL TO MAKE THE ARREST BEFORE THEY WOULD TAKE THE PATIENT FROM THE HOSPITAL?
A. YES, SIR. BUT THAT WAS REQUIRED BY LAW. BUT I WAS CONCERNED -
Q. SIR, MY QUESTION SIMPLY WAS: WAS A COPY OF THE UDS

**[GOOD 217]**

GIVEN?
A. I BELIEVE THAT IT WAS.
Q. SO, AND THAT WAS PART OF THE PATIENT'S MEDICAL RECORD, WASN'T IT?
A. I THINK IT EVENTUALLY BECAME A PART OF IT, YES, SIR.
Q. SIR, ALSO, ACCORDING TO THE HOSPITAL, A COPY OF THE PATIENT'S DISCHARGE SUMMARY, THEIR FITNESS PEDIATRICALLY FOR DISCHARGE FROM THE HOSPITAL WAS GIVEN TO THE OFFICER WHO CAME TO THE HOSPITAL TO GET THE PATIENT AND TAKE HER INTO CUSTODY; ISN'T THAT SO?
A. I DON'T KNOW. I WOULD ASSUME THAT YOU'RE RIGHT.
Q. AND THAT, SIR, THE DISCHARGE SUMMARY IS PART OF THE PATIENT'S MEDICAL RECORDS, ISN'T IT?
A. YES, SIR.

Q. AND YOU'RE NOT REQUIRED BY ANY LAW THAT YOU KNOW OF TO REPORT A PATIENT'S DISCHARGE SUMMARY, ARE YOU, TO THE POLICE?
A. NO, SIR. AND I COULD ONLY GUESS WHY. I'LL BE GLAD TO DO THAT, WHY IT WAS DONE, BUT, NO, SIR.
Q. WELL IF THERE IS NO REQUIREMENT LEGALLY FOR DOING IT, SIR, AND IF THERE IS A CONFIDENTIALITY CONCERN, WOULD YOU AGREE WITH ME THAT THE RELEASING OF - IF NOTHING ELSE, THE DISCHARGE SUMMARY TO THE POLICE, VIOLATED THE STANDARDS AND PRACTICE OF THE HOSPITAL WITH RESPECT TO CONFIDENTIALITY OF PATIENT RECORDS?
A. NO, SIR, I WOULDN'T AGREE.

**[GOOD 218]**

Q. SIR, THAT DISCHARGE SUMMARY CONTAINS INFORMATION ABOUT THINGS LIKE PRIOR MEDICAL HISTORY, SEXUALLY TRANSMITTED DISEASES, STERILIZATION PROCEDURES DONE WHILE IN THE HOSPITAL, HIV STATUS, THINGS LIKE THAT, DOESN'T IT?
A. I BELIEVE THAT IT DOES. AND THAT'S PROBABLY THE REASON THEY DID THAT.
Q. WOMEN WHO TESTED POSITIVE FOR AMPHETAMINES WAS REPORTED ONLY TO DSS AND NOT TO THE POLICE; ISN'T THAT SO?
A. I DON'T KNOW, SIR.

Q. WELL, SIR, DO YOU KNOW WHAT THE POLICY - DO YOU KNOW WHAT THE POLICY REQUIRED? DO YOU KNOW HOW THE POLICY WAS APPLIED. THAT'S PROBABLY A BETTER QUESTION.

DO YOU KNOW HOW THE POLICY WAS APPLIED WITH RESPECT TO THE REPORTING OF WOMEN WHO TESTED POSITIVE FOR ANY DRUG OTHER THAN COCAINE?

A. NO, SIR.

Q. WOULD THAT NOT BE IMPORTANT TO KNOW, SIR, IF THERE WAS AN OBLIGATION, AS YOU SAY IT, TO REPORT TO THE POLICE SUBSTANCE-ABUSING PREGNANT WOMEN?

A. YES, SIR. I ASSUME THAT THEY FOLLOWED THE LAW.

Q. AND, SIR, IF IN FACT AMPHETAMINES, BARBITURATES, HALLUCINOGENS, OPIATES WERE NOT REPORTED TO THE POLICE, BUT TO SOMETIMES DSS, WOULD YOU NOT TAKE THE POSITION THAT THE HOSPITAL WAS BREAKING THE LAW THAT YOU SAID THAT YOU HAD TO ABIDE BY.

**[GOOD 219]**

A. I'M NOT HEDGING ON YOU, I WOULD HAVE TO KNOW A PARTICULAR CASE WHETHER CRACK COCAINE WAS ALSO INVOLVED IN THAT. BUT IF IT WASN'T, POSSIBLY THEY DID BY NOT REPORTING IT.

Q. WHY, SIR? WHAT WAS THE RATIONAL OF THE HOSPITAL? WHAT

WAS THE RATIONAL OF THE HOSPITAL OF LIMITING IT TO CRACK COCAINE AND NOT TO OPIATES, BARBITURATES, HALLUCINOGENS AND AMPHETAMINES?

A. THAT'S A MEDICAL QUESTION. I COULDN'T ANSWER YOU.

Q. WELL, SIR, DIDN'T IT BECOME A LEGAL QUESTION TO INVOLVE YOU WITH RESPECT TO THE CONCEPT OF NARROWLY TAILORING A POSITION POLICY?

A. NO, SIR. AGAIN, THEY TOLD ME THAT THERE WAS AN EPIDEMIC OF CRACK COCAINE THAT WAS KILLING BABIES. AND THE DOCTORS WANTED A POLICY THAT WAS FAIR AND NONDISCRIMINATORY. AND ASKED MY ADVICE ON HOW TO IMPLEMENT SUCH A POLICY. AND I WAS INSTRUMENTAL, A FOUNDER, ALONG WITH SHIRLEY BROWN OR WHOEVER, DOZEN OTHER PEOPLE IN OTHER AGENCIES, IN GETTING A POLICY THAT. WORKED TO SAVE THESE BABIES LIVES. THAT'S ALL THE ADVICE I GAVE THEM. AND THAT'S ALL I WAS TOLD. WE HAD AN EPIDEMIC, WE HAD TO DO SOMETHING, AND IT HAD TO DO WITH CRACK COCAINE.

Q. YOUR OBLIGATION TO REPORT GUNSHOT WOUNDS, YOU KEEP TELLING US ABOUT THAT. THAT OBLIGATION DOESN'T CHANGE DEPENDING UPON THE KIND OF BULLET OR THE KIND OF GUN, DOES IT?

A. NO, SIR.

Q. AND THE OBLIGATION TO REPORT SUBSTANCE-ABUSING PREGNANT

**[GOOD 220]**

WOMEN DOESN'T CHANGE WITH RESPECT TO THE KIND OF SUBSTANCE THAT THEY'RE ABUSING WHEN IT COMES TO THE ABUSE OF THE CHILD?

A. I AGREE WITH THAT.

Q. BUT THIS POLICY DID CHANGE WITH RESPECT TO WHAT DRUGS GOT REPORTED TO THE POLICE?

A. THIS POLICY WAS DIRECTED AT A SPECIFIC PROBLEM, CRACK COCAINE EPIDEMIC.

Q. DID YOU TAKE ANY AFFIRMATIVE STEPS AS THE GENERAL COUNSEL FOR THE HOSPITAL TO ENSURE THAT ALL SUBSTANCE-ABUSING PREGNANT WOMEN CAME UNDER THE POLICY?

A. I'M NOT SURE I UNDERSTOOD. THAT -

Q. DID YOU TAKE ANY STEPS AS GENERAL COUNSEL TO THE HOSPITAL IN ORDER TO ENSURE THAT THE POLICY WAS NOT DISCRIMINATORY TO MAKE SURE THAT ALL DRUGS USED BY PREGNANT WOMEN WERE REPORTED TO THE POLICE?

A. NO, SIR. I WAS CONCERNED WITH THIS ONE PARTICULAR POLICY ONLY.

Q. HOW MANY - LET ME WITHDRAW THAT. THERE WAS NO PURPOSE, SIR, WITH RESPECT TO FETAL WELL-BEING, WAS THERE, FOR REPORTING A WOMEN WHO HAD ALREADY DELIVERED A CHILD? DIDN'T HELP PROTECT THAT CHILD, DID IT?

A. NO, SIR. BUT IT MAY HAVE PROTECTED ADDITIONAL CHILDREN.

I WAS TOLD THAT MANY OF OUR CLIENTS HAD THREE, FOUR, FIVE, SIX BABIES ALL BORN ADDICTED TO CRACK COCAINE. SO I THINK THAT'S WHAT THE THINKING WAS THAT IF EVERYTHING ELSE FAILED YOU DID

**[GOOD 221]**

REPORT THAT AND MAYBE YOU COULD PREVENT IT FROM RECURRING THE NEXT YEAR.

Q. ONE OF THE CRITERIA, ONE OF THE CRITERIA USED TO - USED AS THE FOUNDATION FOR RUNNING THE URINE DRUG SCREEN WAS LACK OF PRENATAL CARE OR LATE PRENATAL CARE. YOU WERE AWARE OF THAT, WEREN'T YOU?

A. YES, SIR.

Q. WERE YOU AWARE, SIR, THAT LATE PRENATAL CARE OR LACK OF PRENATAL CARE WAS MUCH MORE PREVALENT IN THE BLACK COMMUNITY THAN THE WHITE COMMUNITY WHEN THAT WAS SELECTED AS A CRITERIA?

A. NO, SIR.

Q. WOULD YOU AGREE WITH ME, SIR, THAT IF THAT IS TRUE, WHERE WE THEN COMBINE THAT WITH THE RACIAL MAKEUP OF THE PATIENTS SERVED AT MUSC, WE BEGIN TO HAVE A DISPARATE IMPACT PROBLEM?

A. I DON'T KNOW THAT I AGREE WITH THAT. WHAT YOU'RE SAYING IS THAT THE DOCTORS SAT AROUND AND FIGURED UP MEDICAL CRITERIA WHICH WOULD TARGET A CLASS OF PEOPLE, AND I JUST DON'T THINK

THAT THAT WAS THE CASE.
MR. WHERRY: BEAR WE ME FOR JUST ONE MOMENT, YOUR HONOR.
(PAUSE IN PROCEEDINGS.)
Q. (BY MR. WHERRY, CONTINUING) ONE LAST QUESTION. ALL OF THE DATA THAT YOU GOT THAT CAUSED YOU TO BE CONCERNED ABOUT THE CRISES IN SUBSTANCE-ABUSING PREGNANT WOMEN, THE NUMBER OF THEM COMING INTO THE HOSPITAL, THAT DATA ALL CAME FROM SHIRLEY

**[GOOD 222]**

BROWN, DIDN'T IT?
A. NO, SIR. I READ IN THE STATE NEWSPAPER AND THE GREENVILLE NEWS AND NEWS AND COURIER IN CHARLESTON, I READ CERTAIN LEGAL PUBLICATIONS THAT TALKED ABOUT AN EPIDEMIC. I TALKED TO ATTORNEYS IN OTHER STATES AND OTHER UNIVERSITIES IN THE NORTHEAST. IT WAS TERRIBLE IN CALIFORNIA, WAS AN EPIDEMIC. AND I BECAME CONCERNED THAT IF IT COULD HAPPEN THERE IT COULD HAPPEN IN SOUTH CAROLINA. AND THAT'S HOW I GOT INTERESTED IN IT.
Q. WERE YOU SAYING, SIR, THAT BEFORE THE POLICY WAS DEVELOPED YOU HAD NO STATISTICS AS TO WHETHER IT WAS A CRISES IN CHARLESTON, SOUTH CAROLINA?
A. OH, I HAD NO IDEA UNTIL I STARTED READING IN THE

PUBLICATIONS AND WATCHING ON TV AND TALKING TO OTHER COUNSEL ACROSS THE COUNTRY THAT WE EVEN HAD A PROBLEM. I'M A LITTLE BIT IGNORANT, I'M STILL NOT SURE THAT I KNOW WHAT CRACK COCAINE IS.

Q. WAS THAT BEFORE OR AFTER THE MEDICAL UNIVERSITY STARTED GIVING INFORMATION TO THE CHARLESTON POLICE DEPARTMENT TO ARREST WOMEN THAT YOU - THAT YOU BEGAN TO HEAR ABOUT IT?

A. LONG BEFORE THAT, YES, SIR.

Q. AND LONG BEFORE YOU WROTE THE SOLICITOR CONDON?

A. WELL, THAT WAS ONE OF THE REASONS THAT I WROTE HIM BECAUSE OF WHAT I HEARD AND READ.

Q. NOT WHY DID YOU WRITE TO HIM, MR. GOOD, LONG BEFORE YOU

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

**EXCERPTS FROM TESTIMONY OF REUBEN GREENBERG**

**[GREENBERG 129]**

Q. AND YOU HAVE BEEN THE POLICE CHIEF IN CHARLESTON SINCE WHEN?
A. APRIL 12, 1982, WHICH MAKES IT ALMOST 15 YEARS NOW. FOURTEEN AND A HALF YEARS OR SO.
Q. GOOD. I HOPE IT WILL BE ANOTHER 40 YEARS.
A. YES, SIR.
Q. LET'S TALK ABOUT THIS INTERAGENCY POLICY AND YOUR ROLE IN THE FORMULATION OF THE POLICY.
FIRST OF ALL, HOW DID YOU BECOME AWARE OF THE SUBJECT MATTER OF COCAINE USE B[illegible] PREGNANT WOMEN?
A. WELL I BECAME AWARE OF IT IN GENERAL AS A MEMBER OF THE TASK FORCE, THE OFFICE OF JUVENILE JUSTICE AND DELIQUENCY PREVENTION, WHICH IS A FEDERAL GOVERNMENT AGENCY THAT IS INTERESTED IN REDUCING THE INCIDENCE OF JUVENILE PERPETRATION OF VARIOUS KINDS OF CRIMES AND ALSO JUVENILE VICTIMIZATION, THAT'S WHERE I FIRST HEARD ABOUT THAT PARTICULAR TOPIC.

Q. ALL RIGHT, SIR. AND WERE YOU INVOLVED WITH THE FORMATION OF A COMMITTEE AND THE STUDYING OF THIS INTERAGENCY POLICY BEFORE IT WAS ADOPTED AT THE MEDICAL UNIVERSITY?
A. YES.
Q. AND WHAT WAS THE GOAL, AS YOU UNDERSTOOD, IT FROM THIS POLICY?
A. WELL, THE GOAL WAS TO STOP BABIES FROM BEING BORN ADDICTED TO DRUGS.
Q. AND DID YOU - DID YOU SET FORTH, OR DID MR. CONDON SET

**[GREENBERG 130]**

FORTH MEDICAL CRITERIA BY WHICH WOMEN WOULD HAVE THEIR URINE TESTED?
A. NO. WE HAD NO ROLE IN DETERMINING HOW, OR WHOM FOR THAT MATTER, IT WOULD TEST. I JUST ASSUMED THAT THE HOSPITAL TEST PEOPLE THAT THEY TREAT. I HAD NO ROLE IN THAT MYSELF, NO.
Q. SO THE MEDICAL CRITERIA FOR PATIENTS BEING TESTED, WAS THAT SOMETHING THAT THE POLICE ASKED FOR?
MS. DUNN: OBJECTION, YOUR HONOR, HE IS REALLY LEADING.
MR. HOOD: OKAY.
Q. (BY MR. HOOD, CONTINUING) THE MEDICAL CRITERIA, WHO CAME UP WITH THAT?

A. I ASSUME THAT IT WAS THE PEOPLE AT THE MEDICAL UNIVERSITY CAME UP WITH THAT CRITERIA.
Q. YES, SIR. WITH REGARD TO THE SOUTH CAROLINA CHILD ABUSE STATUTE, IS THERE A REPORTING REQUIREMENT?
A. YES, THERE IS A REPORTING REQUIREMENT, YES, SIR. I RECALL THAT IT PROVIDES CRIMINAL PENALTIES FOR FAILURE TO REPORT AS WELL.
Q. YES, SIR. AND WERE THE ARRESTS THAT WERE MADE, AND PARTICULARLY OF THE TEN PLAINTIFFS IN THIS LAWSUIT, UNDER THIS POLICY, WERE THEY MADE IN CONFORMITY WITH THE STANDARD POLICIES AND PROCEDURES OF THE CITY POLICE DEPARTMENT?
A. YES, SIR, THEY WERE.
Q. AND DID THOSE ARRESTS CONFORM WITH THE NORMS AND

**[GREENBERG 131]**

STANDARDS OF CHARLESTON CITY POLICE DEPARTMENT?
A. YES, SIR, THEY DID.
Q. NOW, SOME OF THESE WOMEN, WHEN THEY WERE ARRESTED, HAD HANDCUFFS PUT ON THEM AND THEY HAD CHAINS PUT ON THEIR FEET. EXPLAIN TO THE JURY WHY THAT IS DONE?
A. WELL, I - ABOUT TEN YEARS AGO I ORDERED THAT EVERY PERSON TRANSPORTED FROM THE POLICE FACILITY TO THE HOSPITAL OR

FROM THE HOSPITAL TO A POLICE FACILITY, THAT THAT PERSON BE HANDCUFFED AND THAT THEY BE RESTRAINED WITH LEG RESTRAINTS AND THAT THE HANDCUFFS BE IN SUCH A FASHION THAT THEY'RE NOT ABLE TO, YOU KNOW, GRAB AN ITEM, YOU KNOW, EVEN HANDCUFFED AND STRIKE SOMEBODY WITH IT.

THE PURPOSE OF THAT WAS TO PREVENT FURTHER ESCAPES. WE HAD SOME ESCAPES FROM THE HOSPITAL OF PEOPLE THAT WE WERE WATCHING THERE, AND THEY ESCAPED AND WERE OUT ON THE STREET FOR MANY WEEKS BREAKING INTO PEOPLES' HOUSES, ATTACKING PEOPLE, ROBBING PEOPLE. IN ORDER TO PREVENT THOSE KIND OF INCIDENTS FROM RECURRING, WE ORDERED THAT THE RESTRAINTS BE PUT ON THE FEET, FOR EXAMPLE, BECAUSE WHAT HAPPENED BEFORE IS THEY ACTUALLY OUTRAN THE OFFICERS. I MEAN, THE OFFICERS COULDN'T GUARANTEE THAT THEY COULD OUTRUN EVERYBODY THAT THEY HAD ARRESTED. AND SINCE THEY COULDN'T GUARANTEE THEY WOULD OUTRUN THEM, THEN WE PUT RESTRAINTS ON THEIR LEGS SO ALMOST ANYONE COULD APPREHEND THEM.

Q. THANK YOU. THE INFORMATION THAT WAS -

**[GREENBERG 132]**

A. I WOULD JUST LIKE TO ADD, WE HAVE HAD NO ESCAPES IN OVER

TEN YEARS BECAUSE OF THAT POLICY. NO ONE HAS ESCAPED.
Q. CONGRATULATIONS.
AND WHAT ABOUT OFFICERS GETTING HURT?
A. WE HAVE HAD -
MS. DUNN: OBJECTION, YOUR HONOR. IT'S GOING BEYOND ANYTHING THAT IS REALLY RELEVANT HERE.
THE COURT: I WILL PERMIT IT. GO AHEAD.
Q. (BY MR. HOOD, CONTINUING) YES, SIR.
A. WE HAVE HAD NO OFFICERS INJURED AS A RESULT OF SOMEONE WHO WAS CONFINED.
Q. CHIEF GREENBERG, WERE THE ARRESTS UNDER THIS POLICY BASED ON INFORMATION RECEIVED FROM EITHER CHARLESTON COUNTY SUBSTANCE ABUSE OR FROM THE MEDICAL UNIVERSITY?
A. AS I RECALL THE ARRESTS CAME ONLY FROM INFORMATION RECEIVED FROM THE MEDICAL UNIVERSITY.
Q. OKAY. IS IT PROPER TO ARREST A PERSON FOR THE COMMITTING OF A CRIME BASED ON INFORMATION FROM AN INFORMANT SUCH AS THAT?
A. YES, SIR.
Q. DO YOU NEED A SEARCH WARRANT, A SUBPOENA OR ARREST WARRANT?
MS. DUNN: OBJECTION, YOUR HONOR, HE IS JUST CONTINUALLY LEADING AT THIS POINT.
MR. HOOD: DO YOU NEED.

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**[GREENBERG 134]**

HAD TO GET AN ARREST WARRANT, GENERALLY SPEAKING, IS NOT RELEVANT. IT'S A QUESTION OF WHETHER OR NOT UNDER THE LAW AND THE FACTS THAT THE JURY FINDS TO HAVE EXISTED IN THE CASE WARRANT THE ARREST OR NOT.

MR. HOOD: I'LL TRY AGAIN.

Q. (BY MR. HOOD, CONTINUING) WAS A SEARCH WARRANT OR SUBPOENA NECESSARY TO PROSECUTE THESE WOMEN?

A. NO.

MS. DUNN: OBJECTION, YOUR HONOR. IT'S THE SAME.

THE COURT: I SUSTAIN THE OBJECTION. UNLESS YOU CAN TELL ME SOME REASON WHY IT'S RELEVANT. AND THE REASON YOU HAVE GIVEN ME IS NOT SUFFICIENT SO FAR.

Q. (BY MR. HOOD, CONTINUING) IF A PREGNANT WOMEN COMMITS A CRIME, DO THE POLICE ARREST THEM?

A. YES.

Q. WAS THIS POLICY AND THE ARREST OF THESE WOMEN UNDERTAKEN IN THE NORMAL, STANDARD FASHION BY YOUR POLICE DEPARTMENT?

A. YES.

Q. IF THE POLICE DEPARTMENT WAS NOTIFIED BY A HOSPITAL OTHER THAN THE MEDICAL UNIVERSITY THAT A WOMEN WAS USING COCAINE WHO WAS PREGNANT, WOULD YOUR DEPARTMENT HAVE RESPONDED?

MS. DUNN: OBJECTION, YOUR HONOR. THIS CALLS FOR SPECULATION.

THE COURT: I DON'T THINK SO. I OVERRULE THE OBJECTION?

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**[GREENBERG 136]**

THAT SOMETHING POSITIVE COULD BE DONE, YES.

Q. AND YOU WANTED, AS A POLICE OFFICER, TO BE ABLE TO PARTICIPATE IN THAT POSITIVE SOLUTION?

A. NO, I DIDN'T WANT LIKE - I DIDN'T PARTICULARLY WANT A POLICE OFFICER TO PARTICIPATE IN IT. WHAT I WOULD LIKE TO HAVE DONE IS FOR THE PROBLEM TO HAVE GONE AWAY BY THE SUBJECT IN THIS CASE TO STOP USING ILLEGAL DRUGS. THAT WOULD BE THE EASIEST WAY, BUT UNFORTUNATELY WE HAVE NOT, OVER THESE MANY YEARS, BEEN ABLE TO PERSUADE THEM TO DO SO. SO CONSEQUENTLY IF THE OPPORTUNITY AROSE, WHICH IT DID IN THIS CASE WHERE I COULD ASSIST IN THAT OUTCOME, THAT I WOULD PARTICIPATE IN IT.

Q. AND THE OPPORTUNITY THAT AROSE WHEN THE MEDICAL UNIVERSITY CAME AND OFFERED TO PROVIDE THE POLICE DEPARTMENT THE INFORMATION THEY NEEDED IN ORDER TO ARREST; IS THAT FAIR?

A. THAT'S FAIR. THAT'S VERY COMMON. MANY CITIZENS DO THAT ALL THE TIME.
Q. THAT'S NOT THE QUESTION I ASKED. I ASKED IN THIS SITUATION, DID THE MEDICAL UNIVERSITY COME FORWARD AND VOLUNTARILY PROVIDE YOU THE INFORMATION THAT YOU NEEDED?
A. THEY WEREN'T THE INITIAL PERSONS THAT CAME FORWARD. AS I RECALL SOMEONE FROM THE SOLICITOR'S OFFICE CONTACTED ME AND THEN WE MET WITH THE MEDICAL UNIVERSITY PEOPLE AS A GROUP. PEOPLE FROM THE POLICE DEPARTMENT, THE MEDICAL UNIVERSITY AND ALSO THE SOLICITOR'S OFFICE. AND THE SOLICITOR'S OFFICE

**[GREENBERG 137]**

INDICATED THAT THEY WOULD PROVIDE INFORMATION TO US FOR CERTAIN CATEGORIES OF THEIR PATIENTS WHO HAD REUSED TREATMENT AND WHO HAD - WERE - THEY HAD SOME INDICATION THEY WERE IN VIOLATION OF CRIMINAL LAWS OF THE STATE.
Q. BUT THE CRITICAL PIECE THAT YOU NEEDED WAS THE INFORMATION. WITHOUT THE INFORMATION FROM THE MEDICAL UNIVERSITY, THERE WOULD BE NO BASIS FOR ARREST, IS THAT FAIR?
A. WITHOUT THE INFORMATION FOR MOST CRIMES FROM CITIZENS WE

WOULD HAVE NO BASIS FOR ARREST. THIS - THE ANSWER TO THAT QUESTION IS YES. VERY SIMILAR TO ANY OTHER CRIME THAT IS COMMITTED.

Q. AND THERE WAS NO FORMAL POLICY WITH ANY OTHER HEALTH CARE INSTITUTION IN THE CHARLESTON AREA, OTHER THAN THE MEDICAL UNIVERSITY, TO PROVIDE THESE REPORTS IN THE FASHION THAT WAS DESIGNED UNDER THE INTERAGENCY POLICY?

A. A FORMAL POLICY?

Q. YES.

A. NO, NOT A FORMAL POLICY, BECAUSE THE LAW REQUIRES THEM TO PRESENT US WITH THIS INFORMATION. AND THE SAME WAY THAT IF SOMEONE IS SHOT, NO ONE CAN TREAT A PERSON WHO HAS BEEN SHOT WITHOUT CONTACTING THE POLICE OR ANYONE. IN CHILD ABUSE CASES OR ABUSE OF THE ELDERLY, IT'S AGAINST THE LAW FOR THEM TO TREAT THOSE INDIVIDUALS WITHOUT CONTACTING THE LOCAL POLICE DEPARTMENT.

SO THERE WAS NO PARTICULAR FORMAL POLICY WITH ANY

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**[GREENBERG 143]**

Q. AND TO MAKE THAT DETERMINATION ON A CASE-BY-CASE BASIS?

A. WELL, I DON'T MAKE IT ON A CASE-BY-CASE BASIS. EVERY

TIME YOU ARREST SOMEONE YOU CAN'T ARREST A POLICY OF PEOPLE, YOU ARREST PEOPLE ON THE BASE OF THE INDIVIDUAL ACTS THAT MIGHT CONFORM TO A PARTICULAR POLICY. IN THIS CASE THE POLICY WOULD BE THE LAW THAT IF PEOPLE, I DETERMINE THAT A CRIME HAS BEEN COMMITTED AGAINST THE JUVENILE OR THAT HE MAY SUFFER NEGLECT OR SHE MAY SUFFER NEGLECT IF LEFT AT THAT PARTICULAR LOCATION, IT IS INCUMBENT UPON ME TO REMOVE THAT CHILD FROM THAT LOCATION TO A PLACE OF SAFETY.

Q. TO PROTECT THE CHILD?

A. TO PROTECT THE CHILD.

Q. THERE WERE NOT ARRESTS MADE OF SUBSTANCE-ABUSING PREGNANT WOMEN DURING THE TIME THE POLICY WAS IN PLACE AT ANY HOSPITALS OTHER THAN THE MEDICAL UNIVERSITY OF SOUTH CAROLINA, WERE THERE?

A. BECAUSE OF SUBSTANCE ABUSE?

Q. RIGHT.

A. I DON'T RECALL THAT THERE WERE, NO.

Q. AND PART OF THE ARRANGEMENT BETWEEN THE POLICE DEPARTMENT AND THE MEDICAL UNIVERSITY OF SOUTH CAROLINA WAS THAT IF THEY WOULD GIVE YOU THE INFORMATION THAT WAS THE BASIS FOR THE ARRESTS, YOU WOULD ASSURE THAT IN FACT YOU WOULD ARREST AND THAT THEY COULD SAY THAT TO THEIR PATIENTS, THAT IF YOU DON'T

TAKE THESE CERTAIN STEPS, YOU WILL BE ARRESTED? THAT WAS PART

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**[GREENBERG 148]**

A. WELL, MY PARTICULAR INTEREST WAS THAT IT WAS - CONSTITUTED CHILD ABUSE AND AS SUCH WAS AGAINST THE LAWS OF THIS STATE. BUT ALSO I HAD AN INTEREST IN THE SENSE THAT I WOULD LIKE TO HAVE SEEN FOR EVERY BABY THAT WAS BORN IN THIS COUNTRY TO AT LEAST AT THAT POINT OF BIRTH, IF AT NO OTHER POINT IN HIS OR HER LIFE, AT LEAST AT THAT POINT TO BE EQUAL. IF NO OTHER TIME, THROUGH ENVIRONMENTAL FACTORS OR WHATEVER HAPPENED LATER, AT LEAST AT THAT POINT THAT HE SAW THE FIRST LIGHT OF DAY THAT IT BE EQUAL TO EVERY LITTLE BABY. THAT'S A PERSONAL INTEREST THAT I HAD, BUT I WAS NOT NECESSARILY PUSHING THAT PARTICULAR INTEREST, I WAS INTERESTED IN ENFORCING THE LAW.

Q. AND YOUR UNDERSTANDING OF THE POLICY, WHAT COULD HAVE HAPPENED IS THAT A WOMEN IN THE LATER PART OF HER PREGNANCY COULD HAVE BEEN PUT IN JAIL FOR THE DURATION OF THE PREGNANCY IN ORDER TO PROTECT HERSELF AND THE UNBORN CHILD; ISN'T THAT TRUE?

A. WHILE - WHILE USING ILLEGAL - TO PREVENT THEM FROM USING ILLEGAL SUBSTANCES.
Q. YES.
A. YES, THAT COULD HAVE HAPPENED, YES.
Q. AND THE PURPOSE FOR THAT INCARCERATION WOULD HAVE BEEN FOR HER PROTECTION AND THE PROTECTION OF THE UNBORN CHILD?
A. WELL THE PURPOSE OF IT, IN THAT PARTICULAR SITUATION THERE, WOULD BE FOR PREVENTING FURTHER CHILD ABUSE.

* * *

**[GREENBERG 154]**

Q. (BY MS. DUNN, CONTINUING) YOU SAID THAT IT WAS YOUR EXPERIENCE THAT SOME PEOPLE COULD STOP WITHOUT ANY HELP IN TERMS OF QUITTING SUBSTANCES THEY WERE ADDICTED TO?
A. HAVING BEEN A POLICE OFFICER AND ALSO BEEN A JAILER RUNNING LARGE JAILS, I HAVE SEEN IT HAPPEN MANY, MANY TIMES.
Q. ISN'T IT ALSO YOUR EXPERIENCE THAT SOME PEOPLE HAVE A VERY, VERY DIFFICULT TIME, THEY RELAPSE AGAIN AND AGAIN AND AGAIN?
A. IT'S MY EXPERIENCE INDICATES THAT – IT TAKES ABOUT FOUR TIMES ON THE AVERAGE FOR THEM TO TRY TO STOP USING SOME DRUGS. OTHER DRUGS ARE SOMEWHAT EASIER TO ABANDON. BUT THAT

WHEN YOU TALK ABOUT TREATMENT AND TALK ABOUT BEDS, YOU CAN'T TALK ABOUT ONE BED FOR THAT PERSON, YOU'VE GOT TO TALK ABOUT FOUR BEDS OVER A PERIOD OF TIME.

Q. SO YOUR REAL EXPERIENCE IS THAT RELAPSE OFTEN IS A VERY MUCH A PART OF THE TREATMENT?

A. MY REAL EXPERIENCE IS THAT VERY FEW PEOPLE EVEN SEEK TREATMENT UNLESS A PROBATION OFFICER OR A JUDGE OR A MOTHER OR A WIFE SAYS IF YOU DON'T SEEK TREATMENT THEN I'M GOING TO DO THIS OR THAT OR WHATEVER, OR GIRLFRIEND OR WHATEVER. THAT'S WHY ALMOST NOBODY JUST COMES IN OFF THE STREET AND SAYS I'M JUST GOING TO GIVE IT UP. IT'S USUALLY BECAUSE SOMEBODY ELSE WHO CARES ABOUT THEM IN SOME WAY HAS ACTED IN ORDER TO DISSUADE THEM TO TRY TO GET THEM TO DO IT.

MS. DUNN: NO FURTHER QUESTIONS.

**[GREENBERG 155]**

REDIRECT EXAMINATION

BY MR. HOOD:

Q. DID THIS INTERAGENCY POLICY HAVE AN EFFECT UPON THAT?

MS. DUNN: OBJECTION, YOUR HONOR.

THE COURT: SAY WHAT?

MS. DUNN: OBJECTION. I DON'T THINK THERE WAS ANY QUESTION.

THE COURT: I'LL PERMIT IT. GO AHEAD.

A. YES, I BELIEVE THAT THIS INTERAGENCY POLICY WAS ONE OF A - MANY HAMMERS THAT CAN EXIST IN A SOCIETY IN ORDER TO INDUCE PEOPLE TO STOP SOME SORT OF ILLEGAL OR COUNTERPRODUCTIVE ACTIVITY.

MR. HOOD: THANK YOU, CHIEF.

THE COURT: ANYTHING FURTHER FROM THE PLAINTIFF?

MS. DUNN: NO, YOUR HONOR.

THE COURT: THANK YOU, CHIEF GREENBERG. YOU'RE EXCUSED.

(TESTIMONY COMPLETED.)

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

**EXCERPTS FROM TESTIMONY OF LORI GRIFFIN**

**[GRIFFIN 4]**

A. YES, SIR.
Q. DO YOU REMEMBER THE DATE THAT SHE WAS BORN?
A. OCTOBER 26TH, 1989.
Q. PRIOR TO YOUR DAUGHTER DANIELL BEING BORN, DID YOU RECEIVE PRENATAL CARE?
A. YES, I DID.
Q. WHERE DID YOU BEGIN RECEIVING PRENATAL CARE?
A. I FIRST STARTED GETTING PRENATAL CARE AT A CLINIC AT ST. JAMES SANTEE CLINIC IN MC CLELLANVILLE. AND THEY REFERRED ME TO THE MEDICAL UNIVERSITY.
Q. OKAY. WAIT FOR JUST A MOMENT NOW. MC CLELANVILLE, IS THAT WHERE YOU LIVED THEN?
A. YES, SIR.
Q. YOU INDICATED THAT THAT CLINIC REFERRED YOU TO THE MEDICAL UNIVERSITY OF SOUTH CAROLINA?
A. YES, SIR.
Q. DID THEY TELL YOU WHY?
A. NOT - NOT DIRECTLY, NO.
Q. HAVING RECEIVED THE REFERRAL TO THE MEDICAL UNIVERSITY, DID YOU THEN CHANGE AND RECEIVE YOUR PRENATAL CARE AT THE MEDICAL UNIVERSITY?

A. YES.
Q. THE FIRST TIME YOU WENT TO MUSC, HERE IN CHARLESTON, DID THEY DO ANY MEDICAL TESTS ON YOU? DID THEY TAKE BLOOD SAMPLES, URINE SAMPLES, EXAMINE YOU PHYSICALLY?

**[GRIFFIN 5]**

A. YES. YES, SIR. THAT'S NORMAL, YES.
Q. AT THAT TIME, DID THEY TAKE A MEDICAL HISTORY FROM YOU? DID THEY ASK YOU ABOUT YOUR PREVIOUS BIRTHS AND ANY PROBLEMS YOU HAVE WITH YOUR HEALTH?
A. YES, SIR.
Q. ON THAT FIRST VISIT TO MUSC, DID ANYONE AT THAT HOSPITAL REFER YOU TO ANY SUBSTANCE ABUSE COUNSELING OR ANY OTHER HEALTH CARE PROVIDERS?
A. NO, SIR.
Q. DID ANYONE YOU SAW IN THAT FIRST VISIT TO MUSC THEMSELVES GIVE YOU ANY SUBSTANCE ABUSE OR ALCOHOL COUNSELING?
A. NO, SIR.
Q. AT THAT TIME IN YOUR LIFE, MS. GRIFFIN, WERE YOU USING DRUGS?
A. YES, SIR, I WAS.
Q. WHAT DRUGS?
A. COCAINE.
Q. AT THAT TIME IN YOUR LIFE, WHEN YOU WERE PREGNANT WITH DANIELL, WERE YOU AWARE OF THE DIFFICULTIES OR DANGERS CAUSED

BY USING COCAINE WHEN YOU WERE PREGNANT?
A. NO. NOT REALLY, NO.
Q. DID YOU CONTINUE COMING FROM MC CLELLANVILLE TO CHARLESTON FOR YOUR PRENATAL CARE AFTER THAT FIRST TRIP?
A. YES.
Q. ON THE SECOND TIME THAT YOU CAME TO CHARLESTON, DID THEY

**[GRIFFIN 6]**

EXAMINE YOU AND AGAIN GIVE YOU ROUTINELY THE SAME KIND OF TESTS THAT THEY GAVE YOU THE FIRST TIME?
A. YES, SIR.
Q. ON THAT SECOND TIME THEN, WERE YOU REFERRED TO ANY SUBSTANCE ABUSE COUNSELING OR DID YOU RECEIVE ANY FROM THE PEOPLE AT THE MEDICAL UNIVERSITY?
A. NO, SIR.
Q. AND IN ORDER TO SPEED THINGS UP A LITTLE BIT, MS. GRIFFIN, DID THAT SAME COURSE OF CONDUCT CONTINUE EACH TIME YOU WENT FOR THE PRENATAL CARE?
A. YES, SIR.
Q. I WOULD LIKE TO DIRECT YOUR ATTENTION TO OCTOBER 7TH OF THAT YEAR. DID YOU GO TO - WELL, LET ME WITHDRAW THAT, IF I MAY.
DO YOU REMEMBER WHAT HAPPENED THE END OF SEPTEMBER OF THAT YEAR?

THE COURT: LET'S SEE WHAT YEAR IT IS. I DON'T KNOW THAT THE JURY HAS BEEN TOLD WHEN SHE WENT THERE.

MR. WHERRY: I THINK YOUR ABSOLUTELY RIGHT.

Q. (BY MR. WHERRY, CONTINUING) WHAT YEAR WAS THIS THAT YOU RECEIVED YOUR PRENATAL CARE?

A. UMM, WELL OCTOBER THE BABY WAS BORN, SO PRENATAL WOULD HAVE TO BE SEPTEMBER.

Q. OF WHAT YEAR?

A. 1989.

* * *

**[GRIFFIN 8]**

Q. AND IS THAT WHILE YOU WERE IN THE HOSPITAL?

A. YES.

Q. DESCRIBE FOR THE JURY, PLEASE WHAT HAPPENED? WHAT TOOK PLACE BETWEEN YOU AND SHIRLEY BROWN WHEN YOU MET?

A. UMM, WHEN I WAS ADMITTED TO THE HOSPITAL THEY TOLD ME THAT THEY WOULD HAVE TO, JUST BECAUSE I WAS HAVING PRE-LABOR PAINS AND THEY TOLD ME THAT THEY WOULD HAVE TO KEEP ME OVERNIGHT. SO WHEN I WENT I WAS SET UP IN A ROOM. AND SHIRLEY BROWN CAME IN THAT MORNING AND SHE - I DON'T REALLY RECALL WHAT SHE SAID TO ME, BUT SHE TOLD ME THAT I WAS GOING HOME. SO I GOT DRESSED. AND AFTER I GOT DRESSED THREE

POLICEMEN CAME IN, PUT HANDCUFFS AND SHACKLES ON ME AND TOLD ME I WAS UNDER ARREST FOR DISTRIBUTION OF COCAINE TO A MINOR.

Q. AT THAT TIME, MS. GRIFFIN, HOW PREGNANT WERE YOU?

A. I WAS EIGHT MONTHS PREGNANT.

Q. MS. GRIFFIN, DID YOU UNDERSTAND WHEN THEY TOLD YOU THAT YOU WERE UNDER ARREST FOR DISTRIBUTION OF COCAINE TO A MINOR, WHO THEY MEANT THAT MINOR WAS?

A. NO, I DID NOT. I THOUGHT IT WAS A DRUG DEALER.

Q. NOW YOU SAID THAT THEY PUT HANDCUFFS ON YOU. DID THEY PUT THE HANDCUFFS ON IN FRONT OF YOU OR BEHIND YOUR BACK?

A. IN FRONT OF ME.

Q. YOU SAID THREE POLICE OFFICERS CAME. WERE ALL THREE OF THEM IN UNIFORM?

A. TWO WERE IN UNIFORM.

**[GRIFFIN 9]**

Q. THE ONE THAT WAS NOT, WAS THAT A MALE OR FEMALE OFFICER?

A. A FEMALE.

Q. THE TWO THAT WERE IN UNIFORM, WERE THEY MALE OR FEMALE?

A. MALE.

Q. DO YOU KNOW WHAT POLICE DEPARTMENT THEY WERE FROM?

A. NORTH CHARLESTON, I BELIEVE.

Q. MS. GRIFFIN, YOU SAID THAT THEY PUT HANDCUFFS ON YOU.
LET ME WITHDRAW THAT.

YOU SAID THAT THEY PUT SHACKLES ON YOU; IS THAT RIGHT?

A. YES, SIR.

Q. DESCRIBE FOR THE JURY THE SHACKLES. DESCRIBE WHAT THEY WERE?

A. SHACKLES THAT THEY PUT ON ME, IT WAS A -- I HAD WRISTCUFFS AND IT WAS A CHAIN THAT WENT AROUND MY BELLY AND IT DROPPED DOWN TO MY ANKLES AND IT WAS TO - TWO CUFFS FOR EACH ANKLE.

Q. WERE ALL OF THESE THINGS CONNECTED TOGETHER? THAT IS WERE THE CUFFS CONNECTED SOMEHOW WITH THAT CHAIN OR THROUGH THE CHAIN TO THE SHACKLES?

A. YES, SIR. YES, SIR.

Q. DESCRIBE FOR THE JURY HOW THAT FELT? I DON'T MEAN PHYSICALLY, DESCRIBE WHAT YOU WERE EXPERIENCING WHEN THEY TOLD YOU THAT YOU WERE BEING ARRESTED AND THEY PUT THE HANDCUFFS AND CHAINS AND SHACKLES ON YOU?

**[GRIFFIN 10]**

A. I WAS DEVASTATED. I WAS, WAS IN TOTAL SHOCK. I DIDN'T UNDERSTAND WHAT WAS GOING ON. I NEVER BROKEN THE LAW BEFORE. AND FOR THEM TO JUST COME AND ARREST ME I JUST COULDN'T UNDERSTAND.

Q. PRIOR TO THAT TIME, HAD YOU EVER BEEN IN JAIL?

A. NO.
Q. WHAT WERE YOUR THOUGHTS OR YOUR CONCERNS OR YOUR FEELINGS AS YOU LEFT THE HOSPITAL GOING TO THE JAIL ABOUT THE FACT THAT YOU WERE GOING TO A JAIL?
A. I WILL NEVER TRUST A DOCTOR OR A PHYSICIAN AGAIN. THAT THEY JUST - THEY JUST TORMENTED - TORMENTED ME. I NEVER UNDERSTOOD WHY.
Q. WHEN YOU - I'M SORRY? DID YOU HAVE MORE TO SAY?
A. NO.
Q. WHEN YOU WERE TAKEN FROM YOUR HOSPITAL ROOM TO LEAVE THE HOSPITAL, HOW DID YOU LEAVE THE HOSPITAL? DID YOU WALK OUT?
A. NO.
Q. HOW DID YOU LEAVE?
A. THEY PUT ME IN A WHEELCHAIR AND ONE OF THE POLICE OFFICERS TOOK HIS JACKET OFF SO THEY CAN HIDE MY HANDS.
Q. SO IN THE WHEELCHAIR WERE YOU THEN WHEELED FROM YOUR ROOM TO OUTSIDE THE HOSPITAL?
A. YES.
Q. YOU SAID A POLICE OFFICER WAS KIND ENOUGH TO TAKE HIS JACKET OFF AND PUT IT OVER YOUR HANDS. DID THAT COVER THE

**[GRIFFIN 11]**

SHACKLES?
A. NO.
Q. HOW DID YOU FEEL AS YOU WERE BEING WHEELED THROUGH THE

HOSPITAL IN THE WHEELCHAIR EIGHT MONTHS PREGNANT WITH THE SHACKLES?

A. LIKE I SAID, I WAS - I WAS NUMB. I FELT LIKE I WAS NOBODY. I FELT LIKE THERE WAS A HOLE I COULD JUST CRAWL IN AND DIE. I COULDN'T RESPOND TO ANYTHING. IT WAS HORRIBLE.

Q. AT THAT TIME ON THAT PARTICULAR DAY, MS. GRIFFIN, YOU HAD TWO OTHER CHILDREN?

A. YES.

Q. HOW OLD WERE THEY THEN? NOW MIND YOU THIS IS 7 YEARS AGO.

A. MY SON ANDREW, HE WAS FOUR. AND STEVIE WAS THREE.

Q. WHO WAS TAKING CARE OF THEM THAT DAY WHEN YOU WENT TO MUSC TO GET YOUR PRENATAL CARE?

A. THE PATERNAL GRANDMOTHER OF MY - THE YOUNGEST DAUGHTER.

Q. WERE ANY ARRANGEMENTS MADE FOR HER TO TAKE CARE OF THESE CHILDREN FOR A LONG PERIOD OF TIME, THREE OR FOUR WEEKS?

A. NO, SIR.

Q. WHEN YOU LEFT YOUR CHILDREN THAT MORNING, WHEN YOU LEFT MC CLELLANVILLE TO COME TO MUSC, DID YOU SAY GOOD-BYE TO YOUR CHILDREN?

A. NO.

Q. DID YOU TELL THEM THAT YOU WOULD BE GONE FOR THREE OR

FOUR WEEKS?
A. NO, I THOUGHT I WAS GOING RIGHT HOME.
Q. DID YOU GO RIGHT HOME?
A. NO, I WENT TO JAIL.
Q. WHAT JAIL WERE YOU TAKEN TO, MS. GRIFFIN?
A. LEEDS AVENUE.
Q. AND IS THAT HERE IN CHARLESTON?
A. YES.
Q. WHEN - I'M SORRY. STEP BACK - JUST ONE STEP BACK.
WHEN YOU LEFT THE HOSPITAL, I TAKE IT THAT YOU WERE DRIVEN TO
THE LEEDS AVENUE JAIL?
A. YES. THEY PUT ME IN THE HOLD FOR ABOUT FIVE HOURS.
Q. WELL, LET'S GO BACK TO WHEN YOU WERE DRIVEN. HOW DID YOU
GET IN THE CAR, MS. GRIFFIN, HANDCUFFED AND SHACKLED AND EIGHT
MONTHS PREGNANT? DESCRIBE FOR THE JURY HOW YOU GOT IN THE
BACK SEAT OF THE CAR OR FRONT SEAT, WHICHEVER SEAT YOU GOT IN?
A. THE POLICE OFFICER, THEY HAD TO HELP ME OUT OF THE
WHEELCHAIR BECAUSE MY BELLY WAS SO BIG. AND I COULDN'T BARELY
MOVE. SO SHE HAD TO HELP ME INTO THE CAR AND OUT OF THE CAR.
AND THEY HAD TO BEND - YOU KNOW, BEND ME DOWN SO I COULD GET
IN, SIT IN THE SEAT IN THE BACK OF THE CAR.
Q. DID THEY DRIVE YOU DIRECTLY TO THE JAIL?
A. NO. WE WENT TO THE - FIRST WE WENT TO THE BOND - THE

BONDS HEARING.
Q. OKAY. AND WHEN YOU WENT TO THE BOND HEARING, WERE YOU

**[GRIFFIN 13]**

STILL HANDCUFFED AND SHACKLED?
A. YES.
Q. YOU WENT BEFORE A JUDGE?
A. YES, SIR.
Q. WAS BAIL SET, MS. GRIFFIN?
A. YES, SIR.
Q. HOW MUCH BAIL WAS SET?
A. EIGHTY THOUSAND DOLLARS.
Q. DID YOU HAVE EIGHTY THOUSAND DOLLARS TO POST AS BAIL?
A. NO.
Q. DID YOU HAVE EIGHT THOUSAND DOLLARS TO PAY A BAIL BONDSMAN?
A. NO, SIR.
Q. DID YOUR FAMILY?
A. NO, SIR.
Q. DID ANYONE POST BAIL?
A. NO, SIR.
Q. WHERE DID YOU GO?
A. I WENT TO THE HOLDING CELL FOR ABOUT FIVE HOURS.
Q. NOW WHEN YOU SAY A HOLDING CELL, THIS WAS ON LEEDS AVENUE?
A. EXCUSE ME?
Q. THE HOLDING CELL WAS AT LEEDS AVENUE?
A. YES.
DESCRIBE THAT HOLDING CELL FOR THE JURY. JUST EVERY

**[GRIFFIN 14]**

DETAIL OF IT, WHAT WAS IN IT AND WHAT WAS NOT IN IT.
A. THERE WAS - IT WAS DISGUSTING. I CAN'T EVEN DESCRIBE IT. IT WAS A CELL WITH BARS AND IT WAS A TOILET THAT WAS FILTHY DIRTY. THE FLOORS WERE FILTHY DIRTY. THE BENCH THAT I HAD - THAT I HAD TO SIT ON WAS FILTHY DIRTY. AND IT WAS - IT WAS STINK. IT WAS DISGUSTING.
Q. WHEN YOU SAY THAT THERE WERE BARS, WAS THERE A DOOR THAT HAD BARS IN IT OR WAS THE WHOLE FRONT OF THE CELL BARS?
A. THE WHOLE - THE WHOLE THING WAS BARS ALL AROUND.
Q. YOU SAID THAT THERE WAS A TOILET.
A. YES.
Q. WERE THERE TOILET PARTITIONS? WAS THERE PRIVACY TO USE THE TOILET?
A. NO, IT WAS RIGHT IN THE OPEN.
Q. THE PEOPLE WHO WERE GUARDING YOU THERE, MS. GRIFFIN, WERE THEY MALE OR FEMALE?
A. MALE.
Q. THE BENCH, YOU SAID, WAS FILTHY. WAS THERE ANY OTHER FURNITURE IN THERE, ANYPLACE FOR YOU TO SIT?
A. NO.
Q. WHAT WAS THE BENCH MADE OUT OF, METAL, WOOD, PLASTIC?
A. I BELIEVE IT WAS WOOD.
Q. WHEN YOU SAY IT WAS FILTHY, WHY ARE YOU SAYING THAT? DESCRIBE THAT? WHAT MADE IT FILTHY?

A IT WAS JUST DIRTY. THE FLOOR WAS COVERED IN DIRT. YOU

**[GRIFFIN 15]**

CAN SEE IT. IT WAS A CEMENT - IT WAS A CEMENT FLOOR.
Q. HOW ABOUT THE TOILET, WAS THAT CLEAN?
A. NO, IT WASN'T CLEAN.
Q. WAS THERE A SINK?
A. NO.
Q. DID YOU USE THE TOILET?
A. NO.
Q. WERE THERE ANY BOOKS OR ANY MATERIALS IN THE CELL?
A. NO, SIR.
Q. ANY TELEVISION?
A. NO, SIR.
Q. ANYTHING TO DO EXCEPT SIT ON THE BENCH?
A. EXCUSE ME?
Q. WAS THERE ANYTHING TO DO BESIDES SIT ON THE BENCH?
A. NO, SIR.
Q. WAS ANYONE ELSE IN THE CELL WITH YOU?
A. NO, NOT AT THIS TIME.
Q. I THINK YOU HAVE ALREADY TOLD US, BUT LET ME ASK YOU AGAIN, HOW LONG WERE YOU IN THAT HOLDING CELL?
A. ABOUT FIVE HOURS.
Q. AT THE END OF FIVE HOURS, WHAT HAPPENED? DID SOMEONE POST BAIL?
A. NO. THEY CAME - THE OFFICERS CAME AND GOT ME. AND THEY

TOOK ME TO INSIDE THE JAIL WHERE I WOULD BE - WHERE I WOULD BE AT.

**[GRIFFIN 16]**

Q. WHEN YOU CAME IN TO THE LEEDS AVENUE FACILITY, WERE YOU SEARCHED?
A. YES, SIR.
Q. HOW WERE YOU SEARCHED? DESCRIBE THAT FOR THE JURY.
A. I HAD TO TAKE OFF - I HAD TO TAKE OFF ALL OF MY CLOTHES AND GIVE IT TO THE - AND THEY GAVE ME A - THE COUNTY - THE COUNTY ISSUE, I GUESS YOU CALL IT, JAIL GOWN. AND IT DIDN'T EVEN BARELY FIT BECAUSE I WAS SO BIG.
Q. WHEN YOU SAY THAT YOU HAD TO TAKE OFF ALL OF YOUR CLOTHES, DID THAT INCLUDE YOUR UNDERWEAR?
A. NO.
Q. YOU WERE GIVEN THE JAIL ISSUE CLOTHING YOU SAID?
A. YES.
Q. THAT WAS A DRESS?
A. YES.
Q. WAS THAT DRESS DESIGNED OR ABLE TO FUNCTION AS A DRESS FOR A WOMAN THAT WAS EIGHT MONTHS PREGNANT?
A. NO, SIR.
Q. WHERE WAS THAT GIVEN TO YOU? WHILE YOU WERE IN THE HOLDING CELL?
A. NO, SIR. AFTER I GOT TO LEEDS AVENUE.

Q. AFTER BEING GIVEN THIS JAIL-ISSUE DRESS, MS. GRIFFIN,
WERE YOU PLACED IN ANOTHER SELL?
A. YES, SIR.
Q. DESCRIBE THAT FOR THE JURY. WHERE WERE YOU PLACED?

**[GRIFFIN 17]**

A. I WAS PLACED IN A - IT WAS A - THEY CALL IT THE SICK
BAY. AND IT WAS THREE - THREE - IT WASN'T EVEN A BED, THERE
IS LIKE A METAL TABLE WITH - SOME KIND OF CUSHION ON IT. AND
IT WAS LIKE A TWIN SIZE. NOT EVEN A TWIN SIZE. AND THE ROOM
WAS A BIG METAL DOOR AND A LITTLE HOLE IN IT I GUESS SO THEY
CAN FEED YOU THROUGH THAT. AND
Q. A BIG METAL DOOR YOU SAID?
A. YES.
Q. OKAY.
A. AND INSIDE IT WAS THE - IT WAS A TOILET RIGHT OUT IN THE
OPEN. WITH THE SHOWER IN THE OPEN, TOO. AND THE ROOM WAS
NASTY. AND THERE WAS TWO OTHER WOMEN IN THERE.
Q. WHAT DO YOU MEAN BY THE ROOM WAS NASTY?
A. IT WAS FILTHY. IT WAS A CEMENT FLOOR WITH DUST AND
DIRT. THE WALLS WERE NASTY.
Q. OTHER THAN YOUR BED, COT, WAS THERE ANYPLACE IN THIS ROOM
TO SIT? ANY CHAIRS?
A. NO, SIR.

Q. THERE WERE TWO OTHER PEOPLE THAT YOU SHARED THIS ROOM WITH?
A. YES.
Q. AS YOU ENTERED THIS ROOM AND SAW IT, AND KNEW THAT YOU WOULD BE SHARING IT WITH TWO OTHER WOMEN - I TAKE IT THEY WERE WOMEN?
A. YES.

**[GRIFFIN 18]**

Q. DESCRIBE FOR THE JURY, PLEASE, HOW YOU FELT? WHAT YOUR EMOTIONS WERE, WHAT YOUR THOUGHTS WERE?
A. MY - MY THOUGHT WAS WHEN I GOT IN THERE I JUST- I DIDN'T WANT NOBODY TO HURT ME, BECAUSE SOME PEOPLE DON'T TAKE - THEY DON'T TAKE KIND TO SEEING SOMEBODY ELSE. AND I THOUGHT WHEN I GOT IN THERE, I JUST - I WAS JUST IN SO MUCH SHOCK I COULDN'T EVEN THINK STRAIGHT.
Q. WHO WERE YOU WORRIED ABOUT HURTING YOU, THE JAIL GUARDS OR OTHER PRISONERS?
A. THE OTHER PRISONERS.
Q. BY THE WAY, DID THAT EVER HAPPEN?
A. NO.
Q. THE OTHER WOMEN WHO WERE IN THERE WITH YOU, DID YOU LEARN
Q. WHATTHEY WERE IN FOR?
A. NO, I DIDN'T EVEN TALK TO THEM.
Q. IN THIS SICK BAY, WITH THE COT AND THE TOILET AND THE

SHOWER, WAS THERE ANY TELEVISION?
A. NO.
Q. RADIO?
A. NO.
Q. BOOKS?
A. NO.
Q. BIBLE?
A. NO.
Q. MAGAZINES?

**[GRIFFIN 19]**

A. NO.
Q. NEWSPAPERS?
A. NO.
Q. HOW LONG WERE YOU IN THERE?
A. THREE WEEKS.
Q. AND IS THAT BECAUSE YOU COULDN'T POST THE EIGHTY THOUSAND DOLLARS BAIL?
A. YES.
Q. DURING THAT THREE-WEEK PERIOD, DID ANYONE OFFER YOU DRUG COUNSELING?
A. NO, SIR.
Q. DRUG TREATMENT?
A. NO, SIR.
MEDICATION?
A. NO, SIR.
Q. HELP?
A NO, SIR.
Q. PRAYER?
A. NO, SIR.
Q. DURING THAT THREE-WEEK PERIOD DID YOU HAVE OCCASION TO HAVE OTHER MEDICAL PROBLEMS?
A. I KEPT HAVING PREMATURE LABOR PAINS.

Q. AND WHAT WOULD HAPPEN WHEN YOU WOULD HAVE THE PREMATURE LABOR PAINS?
A. THEY WOULD HAVE TO COME AND GET ME AND TAKE ME BACK TO

**[GRIFFIN 20]**

THE MEDICAL UNIVERSITY TO BE CHECKED OUT.
Q. AND WHEN THEY CAME TO GET YOU AND TAKE YOU BACK TO THE MEDICAL UNIVERSITY TO GET CHECKED OUT, AGAIN HANDCUFFS, SHACKLES?
A. YES, SIR.
Q. HELP GETTING IN AND OUT OF THE CAR?
A. YES, SIR.
Q. WHEN YOU WENT INTO THE MEDICAL UNIVERSITY OF SOUTH CAROLINA IN THE HANDCUFFS AND SHACKLES, WERE THOSE THINGS TAKEN OFF SO THEY COULD GIVE YOU MEDICAL TREATMENT, THE HANDCUFFS AND THE SHACKLES?
A. NO, SIR.
Q. THE DOCTORS WHO EXAMINED YOU AT THE UNIVERSITY, DID IT WITH THE LEG SHACKLES ON?
A. YES, SIR. THEY WOULD A - THEY WOULD LIFT - LET ONE LEG BE FREE AND THE NEXT LEG THEY WOULD ATTACH TO THE BED.
Q. WHEN YOU SAY ATTACH? IS THAT WITH THE HANDCUFF DEVICES?
A. YES, SIR.
Q. IS THAT ALSO TRUE WITH YOUR HANDS AND ARMS?

A. ONE ARM WAS ATTACHED AS WELL.
Q. SO THAT I CAN UNDERSTAND IT, PLEASE CORRECT ME IF I'M WRONG, WOULD THEY TAKE OFF ONE HANDCUFF AND ATTACH THAT HAND CUFF TO THE BED?
A. YES.
Q. SO STILL ONE HANDCUFF ON?

**[GRIFFIN 21]**

A. YES.
Q. SAME THING WITH THE LEG?
A. YES.
Q. ABOUT HOW MANY TIMES, IF YOU RECALL, WERE YOU TAKEN FROM THE JAIL BACK TO THE MEDICAL UNIVERSITY OF SOUTH CAROLINA FOR THIS PRE-TERM LABOR OR OTHER MEDICAL NEEDS?
A. I WOULD SAY ABOUT A GOOD - A GOOD DOZEN OR MORE TIMES.
Q. AND EACH TIME WHEN YOU WENT BACK TO THE JAIL, DID YOU GO INTO THE SAME SICK BAY, SAME ROOM?
A. YES, SIR.
Q. SAME COT, SAME ROOMMATES?
A. YES, SIR.
Q. I TAKE IT, MA'AM, THAT YOU DID USE THE TOILET AND THE SHOWER IN THAT ROOM?
A. YES.
Q. NO PARTITIONS?
A. NO.
Q. DID THERE COME A TIME AT WHICH THE PRE-TERM LABOR WAS NOT PRE-TERM ANYMORE?
A. YES.

Q. AND YOU WERE TAKEN TO THE HOSPITAL TO HAVE THE BABY?
A. YES.
Q. GOING BACK AGAIN FOR A MOMENT, AND I APOLOGIZE. WHEN YOU WENT FOR THESE INTERIM TRIPS TO THE HOSPITAL WHEN YOU HAD PRE-TERM LABOR?

**[GRIFFIN 22]**

A. YES.
Q. WHEN YOU WERE AT THE HOSPITAL, DID ANYBODY GIVE YOU ANY SUBSTANCE ABUSE COUNSELING?
A. NO, SIR.
Q. SUBSTANCE ABUSE THERAPY?
A. NO, SIR.
Q. REFER YOU OUT TO ANY OTHER PROGRAM?
A. NO, SIR.
Q. RECOMMEND ANY OTHER PROGRAM?
A. NO.
Q. OFFER YOU ANYTHING FOR THE FACT THAT AT SOME POINT IN TIME YOU HAD USED COCAINE?
A. NO.
Q. WHEN YOU WENT IN THE HOSPITAL AND HAD THE BABY, HOW LONG DID YOU STAY IN THE HOSPITAL AFTER DELIVERING THE BABY?
A. ABOUT A WEEK.
Q. WHILE YOU WERE IN THE HOSPITAL AFTER DELIVERING THE BABY, WERE THE HANDCUFFS AND SHACKLES STILL ON?
A. YES. I DO RECALL HAVING AN OFFICER COME IN THE ROOM AND

DETACH THE ONE FROM MY LEG AND MY ARM.
Q. SO AT SOME POINT IN TIME THEY TOOK THEM OFF?
A. YES. AFTER THE BABY WAS BORN.
Q. WERE YOU ABLE TO SEE YOUR BABY?
A. YES.
Q. FEED YOUR BABY?

**[GRIFFIN 23]**

A. YES.
Q. HOLD YOUR BABY?
A. YES.
Q. AFTER THE FOUR OR FIVE DAYS THAT YOU HAD - DANIELL, WAS IT?
A. YES.
Q. AND YOU WERE READY TO LEAVE THE HOSPITAL, WHAT HAPPENED? DID YOU GO BACK TO JAIL?
A. NO, SIR.
Q. WHERE DID YOU GO?
A. I HAD TO - THEY TOLD ME THAT I HAD TO GO THROUGH TREATMENT IN ORDER TO GET MY BABY BACK.
Q. WHO TOLD YOU THAT?
A. DSS. FAMILY COURT.
Q. MS. GRIFFIN, IF YOU KNOW, WHAT HAPPENED TO THAT EIGHTY THOUSAND DOLLARS BAIL? HOW DID YOU GET OUT OF JAIL?
A. I GUESS MY PUBLIC DEFENDER GOT ME OFF.
Q. AFTER THE BABY WAS BORN?
A. YES.
Q. AFTER THE BABY WAS BORN, WAS THE CHILD TAKEN FROM YOU?

A. YES, IT WAS.
Q. BY WHOM?
A. DSS.
Q. AND DSS IS THE DIVISION OF SOCIAL SERVICES?
A. DEPARTMENT OF SOCIAL SERVICES.

**[GRIFFIN 24]**

Q. DEPARTMENT?
A. YES.
Q. WAS THAT THE FIRST TIME THAT YOU TALKED WITH OR DEALT WITH ANYBODY WHO GAVE YOU GUIDANCE AS TO WHAT WAS REQUIRED OF YOU. THAT IS, I THINK YOU SAID TREATMENT TO GET YOUR BABY BACK?
A. YES, SIR.
Q. WHAT TREATMENT WERE YOU REQUIRED TO UNDERGO TO GET YOUR BABY BACK?
A. I HAD TO UNDERGO SIX MONTHS IN CHARLESTON COUNTY SUBSTANCE ABUSE CENTER. AND THEY HAD THE BABY - I HAD - COULDN'T HAVE THE BABY FOR SIX MONTHS. AND AFTER COMPLETION, I GET MY BABY BACK.
Q. WHEN YOU SAY SIX MONTHS IN THE SUBSTANCE ABUSE TREATMENT CENTER, DID YOU HAVE TO LIVE THERE? WAS THAT INPATIENT
A. NO, IT WAS OUTPATIENT.
Q. SO YOU GO THERE FOR SOME TIME DURING EACH DAY AND THEN YOU GO HOME AT NIGHT?
A. YES.

Q. WERE YOU TOLD WHY THEY TOOK THE BABY FROM YOU?
A. NO.
Q. IF I RECALL CORRECTLY, YOU SAID THAT YOU HAD TWO OTHER CHILDREN, AGE 4 AND 3?
A. YES.
Q. WHERE WERE THEY? WERE THEY AT HOME?

**[GRIFFIN 25]**

A. NO, THEY WERE AT HOME.
Q. THEY WERE AT HOME LIVING WITH YOU WHEN YOU WERE OUT OF JAIL FINALLY?
A. YES.
Q. WERE YOU EVER SHOWN A VIDEOTAPE BY ANYONE ABOUT THE DANGERS OF ALCOHOL OR DRUG USE IN PREGNANCY?
A. NO.
Q. WERE YOU EVER GIVEN ANY WRITTEN MATERIAL, ANYBODY GIVE YOU A LETTER OR DOCUMENT OR PAMPHLET OR ANYTHING LIKE THAT ABOUT SUBSTANCE ABUSE WHILE YOU WERE PREGNANT?
A. NO.
Q. AND WHEN YOU ANSWER NO, IS THAT INCLUDE ALL OF THE TIMES WHEN YOU WENT TO MUSC?
A. YES.
Q. AND EVEN ALL OF THE TIMES WHEN YOU WERE IN JAIL?
A. YES.
Q. WERE YOU EVER GIVEN A LIST, EVEN AFTER YOU WENT INTO THE

SUBSTANCE ABUSE TREATMENT, WERE YOU EVER GIVEN A LIST OF AVAILABLE RESOURCES FOR A SUBSTANCE ABUSE TREATMENT?
A. NO.
Q. DID YOU EVER BECOME AWARE OF, UP TO AND INCLUDING THE COMPLETION OF THAT TREATMENT, OF ALTERNATIVE PLACES TO GET TREATMENT, PLACES OTHER THAN THE SUBSTANCE ABUSE TREATMENT CENTER?
A. NO.

**[GRIFFIN 26]**

Q. WHERE WAS THIS CENTER THAT YOU WENT TO?
A. CHARLESTON COUNTY SUBSTANCE ABUSE CENTER. I BELIEVE IT'S ON - I'M NOT SURE OF THE STREET.
Q. BUT HERE IN CHARLESTON?
A. YES.
Q. HOW FAR IS THAT FROM MC CLELLANVILLE WHERE YOU LIVE?
A. IT'S ABOUT AN HOUR RIDE.
Q. EACH WAY?
A. YES.
Q. HOW OFTEN DID YOU HAVE TO GO?
A. I BELIEVE IT WAS THREE TIMES A WEEK, IF I'M NOT MISTAKEN.
Q. WHAT HOURS?
A. IT WAS NIGHTTIME. IT WAS LIKE FROM I BELIEVE FIVE TILL LIKE NINE.
Q. DID YOU OWN A CAR AT THAT TIME?
A. I HAD ONE, BUT IT WAS BROKE.
Q. HOW DID YOU GET HERE THREE NIGHTS A WEEK, AN HOUR EACH

WAY?
A. MY PATERNAL GRANDMOTHER TOOK ME. PATERNAL GRANDMOTHER OF THE BABY TOOK ME.
Q. DID YOU HAVE TO MAKE THOSE ARRANGEMENTS TO GET YOUR BABY BACK OR WAS THAT DONE THROUGH DSS OR SUBSTANCE ABUSE TREATMENT CENTER?
A. IT WAS DONE THROUGH DEPARTMENT OF SOCIAL SERVICES.
Q. THEY ARRANGED FOR YOUR GRANDMOTHER TO BRING YOU?

**[GRIFFIN 27]**

A. NO. I HAD TO ASK HER TO TAKE ME BECAUSE I HAD NO OTHER WAY TO GET THERE.
Q. AND WHAT WERE YOU TOLD WOULD HAPPEN IF YOU DIDN'T GET THERE?
A. I WASN'T TOLD ANYTHING IF I DIDN'T -
Q. WHEN YOU WERE ORIGINALLY REFERRED TO MUSC AND THEY PERFORMED THE ORIGINAL TESTS ON YOU?
A. UMM-HMM.
Q. BLOOD, URINE, EXAMINATION AND LIKE THAT, DID ANYONE TELL YOU THAT THE RESULTS OF THOSE EXAMINATIONS WOULD BE TURNED OVER TO THE POLICE?
A. NO, SIR. NEVER HEARD OF THAT.
Q. DID ANYONE TELL YOU THAT THEY WOULD BE DISCLOSED TO ANYONE ELSE?
A. NO, SIR.
Q. DID ANYONE TELL YOU THAT THEY WOULD BE TURNED OVER TO

ATTORNEY GENERAL CONDON?
A. NO, SIR.
Q. DID ANYONE TELL YOU THAT THEY MIGHT BE USED TO PROSECUTE YOU CRIMINALLY?
A. NO, SIR.
Q. ANYONE TELL YOU YOU HAD THE RIGHT TO REFUSE THAT PROCESS?
A. NO, SIR.
Q. ANYONE TELL YOU YOU HAD THE RIGHT TO REFUSE TREATMENT?
A. NO, SIR.

**[GRIFFIN 28]**

Q. DID YOU CONSENT, DID YOU GIVE YOUR PERMISSION FOR THE DISCLOSURE OF YOUR MEDICAL INFORMATION TO ANYONE ELSE?
A. NOT TO MY KNOWLEDGE.
Q. DID YOU EVER GIVE YOUR PERMISSION FOR DISCLOSURE TO THE POLICE?
A. NO, SIR.
Q. DID ANYONE AT MUSC, INCLUDING SHIRLEY BROWN, EVER ASK YOU ABOUT DRUG USE BY THE FATHER OF THE CHILD? BY DANIELL'S FATHER?
A. NO, I CAN'T RECALL HER EVER SAYING ANYTHING ABOUT THAT.
Q. MS. GRIFFIN, I MEAN NO DISRESPECT, I KNOW NO OTHER WAY TO ASK THIS QUESTION. DO YOU KNOW WHO DANIELL'S FATHER WAS?
A. YES.
Q. WAS THERE ANY MEDICAL HISTORY INFORMATION TAKEN AT MUSC

ABOUT DANIELL'S FATHER AND HIS ALCOHOL ABUSE OR USE OR TOBACCO, COCAINE, HEROIN, BARBITURATES, AMPHETAMINES, MARIJUANA?

A. NO, NOT TO MY KNOWLEDGE.

Q. WHEN YOU WERE REFERRED TO MUSC BY THE CLINIC IN MC CLELLANVILLE AND DROVE THE 40 MINUTES TO GET HERE THE FIRST TIME, WHY WERE YOU COMING? WHAT DID YOU THINK WAS GOING TO HAPPEN? WHY DID YOU COME HERE?

A. I THOUGHT I WAS JUST GOING FOR STANDARD PRENATAL CARE.

Q. AND DID YOU EXPECT TO RECEIVE THAT PRENATAL CARE?

A. YES, I DID.

**[GRIFFIN 29]**

Q. DID YOU EXPECT THAT TO RESULT IN YOU BEING TURNED OVER TO THE POLICE AND TO THE SOLICITOR'S OFFICE?

A. NO, I DIDN'T.

Q. AFTER DANIELL'S BIRTH, WERE YOU GIVEN ANY INFORMATION BY MUSC OR ANY OF THE DOCTORS OR PEDIATRICIANS THERE ABOUT DANIELL'S HEALTH OR HEALTH CARE, ANY THINGS THAT YOU SHOULD BE AWARE OF OR LOOK OUT FOR?

A. NO.

Q. DID DSS GIVE YOU ANY INFORMATION ABOUT DANIELL'S HEALTH CARE OR THINGS TO BE POTENTIALLY AWARE OF SINCE YOU HAD USED COCAINE WHEN YOU WERE PREGNANT?

A. NO, SIR.
Q. MS. GRIFFIN, IF YOU HAD BEEN TOLD WHEN YOU FIRST WENT TO MUSC ABOUT THE DANGERS OF USING COCAINE WHEN YOU WERE PREGNANT, AND PROVIDED WITH TREATMENT RESOURCES, WOULD YOU HAVE TRIED TO STOP AND TAKEN ADVANTAGE OF THOSE RESOURCES?
A. YES, I WOULD HAVE.
MR. WHERRY: MAY I HAVE JUST ONE MOMENT, PLEASE, YOUR HONOR.
(PAUSE IN PROCEEDINGS.)
Q. (BY MR. WHERRY, CONTINUING) JUST ONE LAST AREA OF QUESTIONS. OF QUESTIONING.
WHEN YOU GOT TO CHARLESTON COUNTY SUBSTANCE ABUSE PROGRAM, DID YOU INQUIRE AS TO WHETHER THEY HAD ANY TREATMENT PROGRAMS FOR PREGNANT OR WOMEN IN THEIR CHILD BEARING YEARS

**[GRIFFIN 30]**

WHO WERE ABUSING COCAINE?
A. NO.
Q. YOUR TREATMENT THERE AT CCSAC, CHARLESTON COUNTY SUBSTANCE ABUSE, WERE THERE BOTH MEN AND WOMEN IN IT?
A. THE GROUP THAT I WAS IN WAS JUST ALL WOMEN.
Q. ALL WOMEN. JUST, I THINK, TWO MORE QUESTIONS.
AS YOU GO FORWARD WITH YOUR LIFE NOW, MS. GRIFFIN,

WOULD YOU DESCRIBE FOR THE JURY WHAT EFFECT, IF ANY, THIS EXPERIENCE WITH THE MEDICAL UNIVERSITY OF SOUTH CAROLINA, YOUR ARREST, YOUR THREE OR FOUR WEEKS IN JAIL, HAVING YOUR BABY TAKEN FROM YOU, WOULD YOU DESCRIBE FOR THE JURY WHAT EFFECT THAT HAS ON YOU TODAY, IF IT HAS ANY, AS YOU GO FORWARD WITH YOUR LIFE?

A. AS I GO FORWARD WITH MY LIFE NOW, I - I'M MORE PRECAUTIOUS OF WHERE I GET MY MEDICAL TREATMENT FROM AND WHO I TALK TO. IF I TALK TO ANYBODY. I DON'T - THIS EXPERIENCE, TO ME, HAS MADE ME SEE THAT PEOPLE WILL DO ANYTHING THEY WANT TO WITH OR WITHOUT YOUR CONSENT. BUT I KNOW THAT, LIKE I SAID, I WAS USING DRUGS, BUT IF THEY HAD A TOLD ME WHEN I HAD GIVE THEM MY URINE WE FOUND COCAINE IN YOUR URINE, I DEFINITELY WOULD HAVE SEEKED HELP. NOBODY TOLD ME ANYTHING. AS I GO FORWARD IN MY LIFE NOW, I KNOW THAT COCAINE IS NOT GOOD BUT I JUST - MY LIFE IS STILL DEVASTATED EVERY TIME I LOOK AT MY LITTLE GIRL TO KNOW THAT SHE WAS CONCEIVED - ALMOST CONCEIVED IN JAIL.

**[GRIFFIN 31]**

Q. MS. GRIFFIN, I KNOW I KEEP PROMISING THAT I ONLY HAVE ONE

LAST QUESTION. I THINK THIS IS THE LAST ONE. HOW IS DANIELL?

A. SHE IS PERFECT.

MR. WHERRY: YOUR HONOR, I HAVE NO FURTHER QUESTIONS.

THE COURT: CROSS-EXAMINATION.

CROSS EXAMINATION

BY MR. HOOD:

Q. YOU HAVE BEEN USING COCAINE SINCE YOU WERE NINETEEN?

A. IF THAT.

Q. YOU HAVE HAD THREE CHILDREN?

A. YES.

Q. SECOND ONE WEIGHED TWO POUNDS WHEN IT WAS BORN?

MR. WHERRY: OBJECTION.

MR. HOOD: I'LL PUT THE MEDICAL RECORD IN EVIDENCE.

THE COURT: SAY WHAT, SIR?

MR. HOOD: I'LL PUT ALL OF THE MEDICAL RECORDS IN EVIDENCE SO THERE IS A FOUNDATION FOR THAT QUESTION IMMEDIATELY.

MR. WHERRY: I DON'T DOUBT THAT. MAY I BE HEARD.

I WOULD RESPECTFULLY SUGGEST THAT WE HAVE SERIOUS PRIVILEGE PROBLEMS HERE AND RELEVANCE PROBLEMS WITH RESPECT TO CHILDREN OTHER THAN THE CHILD DANIELL THAT WAS BORN OF MS. GRIFFIN. IT'S NOT RELEVANT, IT'S NOT IN ISSUE. I DON'T KNOW HOW THE RECORDS WERE OBTAINED. WE DO HAVE SERIOUS PRIVILEGE

**[GRIFFIN 32]**

PROBLEMS AND RELEVANCE PROBLEMS.
THE COURT: I SUSTAIN THE OBJECTION.
MR. WHERRY: THANK YOU.
THE COURT: THE - IF THAT TESTIMONY HAS ANY RELEVANCE, THEN THAT RELEVANCE NEEDS TO BE SHOWN BY EXPLAINING WHY THAT CHILD WAS BORN IN THE FASHION THAT IT WAS BORN IN. IT MAY BE THAT THAT CHILD WAS BORN PREMATURELY OR HAD A WEIGHT THAT WAS UNNATURAL FOR ANY NUMBER OF REASONS. THE INFERENCE FROM ASKING THE QUESTION, IN THE MANNER THAT MR. HOOD DID, IS TO SUGGEST THAT THIS WITNESS'S USE OF COCAINE FROM AN EARLY AGE CAUSED THAT CHILD TO BE BORN UNNATURALLY- OR PREMATURELY OR IN SOME DEFORMED STATE. WE DON'T KNOW THAT. AND FOR YOU TO ASSUME THAT REQUIRES YOU TO SPECULATE. AND YOU CAN'T DO THAT. YOU NEED MEDICAL TESTIMONY. YOU NEED SOME OTHER EVIDENCE TO LINK THAT FACT TO THIS CASE. AND UNTIL THAT FACT THE WEIGHT OF THAT CHILD IS LINKED TO THIS CASE, IT'S IRRELEVANT. SO DISREGARD IT.
NOW, THAT DOESN'T MEAN THAT IT CAN'T BE ADMITTED AT SOME LATER DATE, BUT IT HAS TO BE GIVEN A PROPER UNDERSTANDING FOR YOU SO THAT YOU CAN GIVE IT THE WEIGHT IT DESERVES AND NOT

GUESS AT WHAT THE VALUE OF IT IS. THIS IS NOT A GUESSING GAME. THERE IS A WAY TO GET EVIDENCE INTO THE RECORD SO THAT YOU CAN UNDERSTAND IT AND EVALUATE IT AND GIVE IT PROPER CONSIDERATION. AND THAT HAS NOT BEEN DONE IN THIS CASE, AND SO I ADMONISH YOU AGAIN TO DISREGARD THAT EVIDENCE.

* * *

**[GRIFFIN 37]**

MR. WHERRY:THANK YOU, SIR.
THE COURT: GIVE IT TO HIM.
MR. HOOD: THE ACTUAL DOCUMENTS?
THE COURT: SURE. UNLESS YOU HAVE GOT A COPY. I DON'T KNOW HOW ELSE HE IS GOING TO LOOK AT THEM.
MR. HOOD: HE HAS HAD THEM.
THE COURT: THEY'RE ENTITLED TO KNOW EXACTLY WHAT YOU'RE PUTTING IN COURT. ARE THEY HOOKED TOGETHER IN ANY FASHION?
MR. WHERRY: THEY'RE RUBBER BANDED, YOUR HONOR.
THE COURT: GO AHEAD. I'LL WITHHOLD RULING ON THOSE UNTIL I CAN HEAR THE PLAINTIFFS' OBJECTIONS, AND THEN I'LL HAVE TO LOOK AT THE RECORDS MYSELF AND JUST SEE IF THERE ARE OBJECTIONS.
Q. (BY MR. HOOD, CONTINUING) YOU WERE REFERRED FROM THE ST.

JAMES HEALTH CLINIC UP IN MC CLELLANVILLE DOWN TO THE MEDICAL UNIVERSITY BECAUSE YOU WERE A HIGH RISK PREGNANCY?

A. YES.

Q. AND YOU WENT TO THE MEDICAL UNIVERSITY ON JUNE THE 28, 1989, AND ONE OF THE FIRST THINGS THAT YOU DID WAS SIGN A CONSENT FORM TO BE TREATED THERE?

A. YES.

Q. AND YOU HAVE READ THAT CONSENT FORM AND YOU SIGNED THAT CONSENT FORM?

A. I MIGHT HAVE SIGNED IT, BUT I PROBABLY DIDN'T READ IT

**[GRIFFIN 38]**

THOROUGHLY.

Q. IS THIS YOUR SIGNATURE ON THE CONSENT FORM?

MR. WHERRY: MAY I HAVE A NUMBER FOR THAT, YOUR HONOR?

THE COURT: HE HASN'T OFFERED IT. HE IS JUST IDENTIFYING HER SIGNATURE.

MR. HOOD: THIS IS DEFENDANT'S EXHIBIT 2 TO HER DEPOSITION.

THE COURT: I DIDN'T HEAR. I WAS INTERRUPTED BY COUNSEL. DID SHE IDENTIFY THAT AS HER SIGNATURE?

MR. HOOD: I'M SORRY. WAS THIS YOUR SIGNATURE?

THE WITNESS: YES.

MR. HOOD: YOUR HONOR, I WOULD LIKE TO PUBLISH A PORTION OF THIS.
THE COURT: IT'S NOT IN EVIDENCE.
MR. HOOD: I WOULD LIKE TO PUT IT IN EVIDENCE.
THE COURT: ANY OBJECTION? SHOW IT TO COUNSEL.
MR. WHERRY: MAY I SEE IT PLEASE?
(PAUSE IN PROCEEDINGS.)
MR. HOOD: WE MET SEVERAL - WHENEVER IT WAS, SEVERAL WEEKS, AS THE LOCAL RULES REQUIRE. I DON'T THINK THERE IS AN OBJECTION.
MR. WHERRY: ONLY OBJECTION IS TO THE HIGHLIGHTING.
MR. HOOD: I WILL PUT IN A CLEAN COPY.
MR. WHERRY: FINE.

**[GRIFFIN 39]**

THE COURT: NOW YOU PLAN TO PUBLISH THE PORTION THAT YOU HAVE HIGHLIGHTED IN YELLOW?
MR. HOOD: YOUR HONOR, WHEN WE REVISIT THE MEDICAL RECORDS, AT THAT TIME THE ORIGINAL WILL COME OUT. I'M NOT GOING TO HAND THIS TO THE JURY, I'M JUST GOING TO READ A PORTION OF IT.
THE COURT: LET'S MARK IT AS AN EXHIBIT. NO OBJECTION TO IT. LET'S MARK IT IN.

MR. HOOD: WE HAVE PREPARED PRIOR TO TRIAL, WITH THEIR KNOWLEDGE AND CONSENT, AS DEFENDANT'S EXHIBIT 13.

THE COURT: GIVE IT TO THE CLERK.

DEPUTY CLERK: DEFENDANT EXHIBIT 13 IN EVIDENCE.

MR. HOOD: MAY I PASS THIS TO THE JURY?

THE COURT: ABSOLUTELY. WE'RE GOING TO HAVE A TREMENDOUS VOLUME OF DOCUMENTS, AND IF THE CLERK IS NOT PERMITTED TO PROPERLY INVENTORY AND GET THEM IN EVIDENCE AND KNOW WHAT IS IN EVIDENCE AND NOT IN EVIDENCE, THEN WE CAN'T MAINTAIN A PROPER RECORD. THAT'S THE PROCEDURE WE HAVE TO GO THROUGH. IF YOU WANT TO PUBLISH, YOU'RE WELCOME TO DO SO.

MR. HOOD: YES, SIR.

Q. (BY MR. HOOD, CONTINUING) MS. GRIFFIN, YOU SIGNED THIS CONSENT FOR AMBULATORY CARE AT THE MEDICAL UNIVERSITY ON JUNE 28, 1989. IT WAS WITNESSED. AND THE - ABOUT THE THIRD SENTENCE INTO THE CONSENT FORM IT SAYS: "I FURTHER CONSENT TO THE TESTING FOR DRUGS IF DEEMED ADVISABLE BY OR NECESSARY

**[GRIFFIN 40]**

IN THE PROFESSIONAL JUDGMENT OF THE PHYSICIAN OR SURGEON OR A

PHYSICIAN OR SURGEON ACTING UNDER THEIR INSTRUCTIONS."

AND THAT'S WHAT THE DOCUMENT SAYS, CORRECT?

A. I DIDN'T READ IT. I JUST SIGNED IT.

Q. OKAY. YOU WANTED TO BE TREATED THERE?

A. I HAD NO CHOICE.

Q. WHAT DO YOU MEAN YOU HAD NO CHOICE?

A. I MEAN, THAT'S WHERE THEY SENT ME, SO THAT'S WHERE I WENT.

Q. YOU DIDN'T HAVE TO WALK INTO THAT HOSPITAL AND ASK THEM TO TREAT YOU, DID YOU? NO ONE MADE YOU DO THAT, DID THEY?

A. THE CLINIC REFERRED ME AND I HAD NO CHOICE. I MEAN.

Q. YOU WERE PREGNANT AND YOU HAD NO CHOICE TO GO TO ANYONE YOU WANTED TO BETWEEN MC CLELLANVILLE AND CHARLESTON TO BE TREATED AS A PREGNANT PERSON?

A. NO. BECAUSE MC CLELLANVILLE IS JUST A CLINIC. I MEAN, THAT'S WHERE I - THAT'S WHERE I NORMALLY WOULD HAVE GONE TO THE CLINIC.

Q. OKAY. YOU PASSED SEVERAL OTHER HOSPITALS GETTING TO THE MEDICAL UNIVERSITY, IS THERE ANY REASON THAT YOU DIDN'T GO TO THOSE?

A. I DON'T KNOW WHY THEY REFERRED ME TO MUSC.

Q. OKAY.

A. I GUESS.

Q. THAT'S WHERE YOU WENT?

**[GRIFFIN 41]**

A. THAT'S WHERE I WAS SENT.
Q. THE POLICE DIDN'T SEND YOU THERE, YOU WENT THERE FREELY, OF YOUR OWN FREE WILL AND ACCORD TO BE TREATED?
A. I WENT THERE BECAUSE THAT'S WHERE I WAS REFERRED BY THE CLINIC.
Q. OKAY. HAD NOTHING TO DO WITH THE POLICE OR MS. LAWSON OR ANYTHING ELSE, YOU WENT THERE BECAUSE THE ST. JAMES CLINIC REFERRED YOU TO THE MEDICAL UNIVERSITY?
A. YES.
Q. ALL RIGHT. THEY TESTED YOU, THE SECOND DAY YOU WENT THERE JUNE 29TH, AND YOU TESTED POSITIVE FOR COCAINE. DO YOU REMEMBER THAT?
A. NOBODY HAS TOLD ME ANYTHING ABOUT TESTING POSITIVE FOR ANYTHING.
Q. DO YOU REMEMBER THAT THEY TOLD YOU NOT TO TAKE COCAINE, THAT YOU WERE PREGNANT, THAT YOU WOULD HURT YOUR BABY?
A. NOBODY HAS EVER SAID ANYTHING LIKE THAT TO ME.
Q. AND, IN FACT, DID YOU CONTINUE TO TAKE COCAINE DURING THIS PREGNANCY?
A. I DID COCAINE, BUT LIKE I SAID, NOBODY HAS EVER TOLD ME NOT TO.

Q. OKAY. DO YOU THINK TAKING COCAINE WAS GOING TO BE GOOD FOR YOUR BABY?
A. I WASN'T THINKING ABOUT IT.
Q. HAD IT BEEN GOOD FOR YOUR OTHER BABY?

**[GRIFFIN 42]**

A. I WASN'T USING DRUGS WHEN I HAD MY OTHER CHILDREN.
Q. DID SOMEONE IMMEDIATELY EXPLAIN TO YOU WHAT HAPPENED TO YOUR OTHER BABY?
MR. WHERRY: OBJECTION, RELEVANCE.
THE COURT: OVERRULED.
Q. (BY MR. HOOD, CONTINUING) DO YOU KNOW WHAT ABRUPTIO PLACENTA IS? AN ABRUPTION OF THE PLACENTA?
A. IT MEANS THE PLACENTA DETACH OR ERUPTED OR WHATEVER.
Q. OKAY. HAVE YOU BEEN TOLD BY DOCTORS WHO HAD TREATED YOU THAT THAT CAN BE CAUSED BY COCAINE?
A. THAT'S IMPOSSIBLE, BECAUSE I WAS NOT ON DRUGS.
THE COURT: IF YOU WOULD, PLEASE ANSWER THE QUESTION. HE ASKED YOU A QUESTION ABOUT WHETHER YOU HAD BEEN TOLD BY THE DOCTORS.
A. NO, I WASN'T.
Q. DO YOU UNDERSTAND THAT IF YOU HAVE THAT OCCURRENCE, IT'S A MEDICAL CRISES FOR BOTH YOU AND THE BABY?
A. YES.

Q. DO YOU UNDERSTAND THAT THAT HAS HAPPENED TO YOU?
A. YES.
Q. DO YOU UNDERSTAND NOW THAT COCAINE CAN CAUSE THAT?
A. NO.
Q. YOU WENT BACK TO THE MEDICAL UNIVERSITY - EIGHT OR NINE DAYS LATER ON OCTOBER THE 7, '89, AND AT THAT TIME YOU HAD USED COCAINE THE DAY BEFORE, YOU WERE BLEEDING, YOU WERE

**[GRIFFIN 43]**

HAVING CRAMPS, CORRECT?
A. SPOTTING, YES.
Q. YOU WERE - ADMITTED TO THE HEALTH CARE PROVIDERS AT THE MEDICAL UNIVERSITY KNOWING THAT THE RISKS OF COCAINE COULD BE HARMFUL TO YOU AND YOUR BABY?
A. REPEAT THAT, PLEASE.
Q. YOU WERE - ADMITTED THAT YOU KNEW THAT THE COCAINE THAT YOU HAD TAKEN THE DAY YOU STARTED THIS BLEEDING AND CRAMPING COULD BE HARMFUL TO YOU AND YOUR BABY?
A. NO, I DON'T RECALL SAYING THAT.
Q. YOU DIDN'T SAY THAT?
A. NOT TO MY KNOWLEDGE, NO.
Q. DID YOU TALK TO A DOCTOR ABOUT WHAT IT COULD DO TO YOUR BABY?
A. NO.
Q. YOU WERE ARRESTED ON OCTOBER THE 10TH. YOU TOLD US ABOUT THAT?

A. YES, I WAS ARRESTED.
Q. YOU WERE TAKEN TO JAIL?
A. YES.
Q. NOW YOU SAY THAT YOU WERE RESTRAINED WITH CHAINS. ARE YOU SURE THAT IS RIGHT?
A. YES, SIR.
Q. YOU SAY THAT A COAT WAS PUT OVER YOU, ARE YOU SURE THAT IS RIGHT?

* * *

**[GRIFFIN 46]**

A. YES.
Q. NOW, SOME GOOD CAME FROM ALL OF THIS, DIDN'T IT? YOU GOT OFF OF COCAINE?
A. I RELAPSED.
Q. AND HAVE YOU RELAPSED SINCE WE TOOK YOUR DEPOSITION? YOU'RE OFF OF IT NOW?
A. OH, I'M OFF OF IT NOW, YES.
Q. GOOD. CONGRATULATIONS.
A. THANK YOU.
Q. AND YOU NOW KNOW IT'S AWFUL, AND PARTICULARLY IF YOU'RE PREGNANT, IT'S AWFUL TO USE COCAINE?
A. YES.
Q. YOU KNOW NOW, WITH THE HELP OF SUBSTANCE ABUSE AND THE VIDEOTAPES THEY HAVE SHOWN YOU AND COUNSELING AND WORK THEY HAVE DONE WITH YOU, AND THE WORK - AND THE HELP YOU HAVE GIVEN OTHER PEOPLE GOING THROUGH COUNSELING, THAT THIS IS NOT SOMETHING THAT A LITTLE BABY THAT CAN'T DEFEND ITSELF SHOULD

BE SUBJECTED TO, COCAINE IS AWFUL? YOU KNOW THAT, DON'T YOU?
A. YES, I DO NOW.
Q. AND IN FACT, AS BAD AS IT WAS, YOU AGREE WITH ME THAT GOING TO JAIL GAVE YOU AN INCENTIVE TO GET OFF COCAINE, AND YOU HAVE?
A. I WOULDN'T SO MUCH SAY IT WAS THE JAIL PART. I FINALLY FOUND GOD IN MY LIFE AND THAT'S WHAT GAVE ME THE INCENTIVE TO GET OFF DRUGS.

**[GRIFFIN 47]**

Q. AND YOU AGREE THAT THAT LITTLE DAUGHTER OF YOURS HAD A RIGHT TO BE BROUGHT INTO THIS WORLD WITHOUT FIRST BEING EXPOSED TO COCAINE, DON'T YOU?
A. YES.
MR. HOOD: EXCUSE ME ONE SECOND.
(PAUSE.)
MR. HOOD: THOSE ARE ALL OF THE QUESTIONS. THANK YOU.
THE COURT: REDIRECT.
MR. WHERRY: JUST ONE.
<u>REDIRECT EXAMINATION</u>
BY MR. WHERRY:
Q. ALL OF THE HOSPITALS THAT EXISTED BETWEEN MC CLELLANVILLE AND CHARLESTON, DID YOU HAVE ANY MONEY TO PAY FOR THEIR PRENATAL TREATMENT OF YOU?
A. NO, SIR.

Q. DID ANY OF THEM TAKE WHATEVER INSURANCE YOU HAD, WHATEVER COVERAGE YOU HAD FOR PRENATAL TREATMENT, OR WAS IT ONLY THE MEDICAL UNIVERSITY?
A. I DIDN'T EVEN HAVE INSURANCE.
Q. AND WOULD ANY OF THOSE OTHER PLACES THAT MR. HOOD ASKED YOU ABOUT TREAT YOU IF YOU DIDN'T HAVE INSURANCE OR MONEY?
A. NO, SIR.
Q. BUT WOULD MUSC?
A. YES.

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

**EXCERPTS FROM TESTIMONY OF PAULA HALE**

**[HALE 31]**

Q. OKAY. SO COCAINE IS THE ONLY DRUG YOU WERE USING AT THAT TIME?
A. YES.
Q. WERE YOU DRINKING ALCOHOL DURING YOUR PREGNANCY?
A. YES. I WAS.
Q. HOW OFTEN WERE YOU DRINKING ALCOHOL?
A. MAYBE EVERY OTHER DAY OR SO.
Q. AND HOW MUCH WOULD YOU DRINK?
A. MAYBE TWO OR THREE CANS. I DON'T KNOW.
Q. OF BEER?
A. BEER.
Q. AND HOW MUCH COCAINE WERE YOU USING AT THAT TIME?
A. I DON'T KNOW. I DIDN'T MEASURE. I MEAN...
Q. ABOUT HOW – HOW MUCH WOULD IT COST YOU A DAY?
A. MOST OF THE TIME I DIDN'T PAY FOR IT.
Q. YOU WEREN'T PAYING FOR IT? WHO WAS PAYING FOR IT?
A. I KNEW A LOT OF PEOPLE, AND SO I DIDN'T PAY FOR IT MOST OF THE TIME.

Q. SO THE PEOPLE YOU KNEW WERE SUPPLYING THE COCAINE FOR YOU?
A. RIGHT.
Q. IN WHAT FORM WERE YOU USING THE COCAINE?
A. I WOULD SNIFF IT AND FREE BASING.

**[HALE 32]**

Q. WHEN DID YOU FIRST START USING COCAINE?
A. MAYBE WHEN I WAS THIRTEEN. I'M NOT SURE.
EXPERIMENTING.
Q. HOW OFTEN DID YOU USE IT WHEN YOU WERE THIRTEEN?
A. NOT THAT OFTEN. I WAS JUST EXPERIMENTING. THAT WAS LIKE MY FIRST TIME.
Q. WHEN DID YOU FIRST START DRINKING ALCOHOL?
A. AROUND THE SAME TIME.
Q. WHEN DID YOUR USE BECOME MORE FREQUENT?
A. AFTER I STARTED WORKING ON THE STREETS.
Q. WHICH WAS WHEN?
A. APPROXIMATELY '83. I DON'T KNOW. MAYBE – YEAH, AROUND THAT TIME. AFTER I LEFT MY HUSBAND.
Q. SO AFTER YOU LEFT YOUR HUSBAND YOU STARTED WORKING ON THE STREETS. WHAT DO YOU MEAN BY WORKING ON THE STREETS?
A. I WAS PROSTITUTING.

Q. OKAY. AND WHERE WERE YOU DOING THIS, DOWNTOWN, OR WHERE?
A. NO, I WAS IN THE NORTH AREA.
Q. SO YOUR USE OF COCAINE BECAME MORE FREQUENT IN 1983?
A. APPROXIMATELY AROUND THERE.
Q. WOULD YOUR JOHN SUPPLY YOU WITH COCAINE?
A. IT WAS VARIOUS WAYS I WAS GETTING IT.

* * *

**[HALE 40]**

A. MY . . .
Q. I MEAN, WITH YOUR SECOND SON MICHAEL?
A. RIGHT.
Q. WERE THOSE THE ONLY REASONS WHY YOU DIDN'T SEEK PRENATAL CARE?
A. YEAH. AND I DIDN'T KNOW HOW TO HELP MYSELF, YOU KNOW. IF THERE WAS ANOTHER ALTERNATIVE, IF THERE WAS A WAY THAT I COULD GET HELP WITHOUT GOING TO JAIL I PROBABLY WOULD HAVE, BUT I DIDN'T SEE ANY OTHER WAY. I DIDN'T KNOW OF ANY OTHER WAY. AND THEN I ACTUALLY GOT ARRESTED.
Q. WHEN DID YOU GET ARRESTED?
A. AFTER THE BIRTH OF MICHAEL, BECAUSE I HAD DRUGS IN MY SYSTEM.
Q. OKAY. WHERE WERE YOU WHEN YOU GOT ARRESTED?

A. I'M NOT SURE, BUT THEY HAD A WARRANT FOR MY ARREST. CONTRIBUTING TO - I'M NOT SURE OF THE CHARGE.
Q. AND YOU'RE THINKING THAT'S WITH MICHAEL?
A. I'M PRETTY SURE. I'M PRETTY SURE.
Q. OKAY. WERE YOU ARRESTED TWO TIMES BECAUSE OF HAVING COCAINE BABIES?
A. I'M NOT - I'M NOT SURE.
Q. OKAY.
A. IT WAS LIKE A REAL ROUGH TIME FOR ME.
Q. OKAY. WELL, LET'S - I WANT TO GO BACK TO THAT, BUT FIRST LET'S TALK ABOUT YOUR THIRD SON. WHAT IS YOUR

**[HALE 41]**

THIRD SON'S NAME?
A. HENRY LAVEL.
Q. CAN YOU SPELL HIS MIDDLE NAME?
A. L-A-V-E-L.
Q. V-E-L - Hale?
A. UH-HUH.
Q. AND WHEN WAS HE BORN?
A. DECEMBER 13TH, 1989.
Q. AND HOW OLD IS HE?
A. HE'S SIX.
Q. WERE YOU USING COCAINE WHEN YOU WERE PREGNANT WITH HIM?
A. YES, I WAS.
Q. AND DID YOU HAVE PRENATAL CARE WITH HENRY?
A. NO, I DIDN'T.
Q. AND WHY DIDN'T YOU?

A. FOR THE SAME REASON.
Q. THE SAME REASON. AND YOU'RE SAYING YOU HAD ALREADY BEEN ARRESTED BECAUSE YOU HAD A COCAINE BABY?
A. I'M NOT SURE IF IT WAS WITH THE FIRST ONE – I MEAN, THE SECOND ONE OR THE THIRD.
Q. OKAY.
A. I'M NOT REAL SURE.
Q. YOU'RE NOT SURE?
A. BUT I KNOW I WENT TO JAIL.

**[HALE 42]**

Q. OKAY. BUT YOU'RE NOT SURE WHETHER YOU GOT ARRESTED AFTER YOU HAD MICHAEL OR AFTER YOU HAD HENRY?
A. RIGHT.
Q. OKAY. SO DO YOU KNOW WHEN IT WAS THAT YOU WENT TO JAIL?
A. NO, I'M NOT SURE OF THE DATE.
Q. YOU DON'T REMEMBER THE DATE, OKAY. HOW MUCH COCAINE WERE YOU USING DURING YOUR PREGNANCY WITH HENRY?
A. MAYBE TWO OR THREE TIMES A WEEK. I DON'T KNOW HOW MUCH I WAS USING.
Q. BUT IS IT STILL - ARE YOU TESTIFYING – ARE YOU SAYING, JUST AS YOUR EARLIER TESTIMONY, THAT YOU WERE NOT PURCHASING IT ALL THE TIME?
A. I WASN'T PURCHASING ALL THE TIME.
Q. OKAY.
A. SOMETIMES I DID.

Q. HOW MUCH MONEY WOULD YOU SPEND A WEEK?
A. I NEVER LIKE TOOK NOTICE. I MEAN, I DIDN'T COUNT.
Q. OKAY. LESS THAN $100.00?
A. MAYBE AROUND THERE OR SOMETHING.
Q. LESS THAN $150.00?
A. BETWEEN MAYBE A HUNDRED AND A HUNDRED AND FIFTY.
Q. OKAY.
A. I'M NOT SURE, BUT APPROXIMATELY.

* * *

**[HALE 54]**

Q. WHO IS ANN SPILLERS?
A. THAT'S LARRY'S SISTER. I WAS LIVING WITH HER OFF AND ON.
Q. OKAY. AND HENRY GASDEN IS?
A. THE FATHER OF HENRY LAVEL.
Q. OKAY. AND WHY DIDN'T YOU HAVE CUSTODY OF HENRY?
A. BECAUSE I HAD DRUGS IN MY SYSTEM, AND HE TESTED POSITIVE.
Q. SO BOTH YOU AND THE BABY TESTED POSITIVE?
A. YES.
Q. SO WHAT HAPPENED - OKAY. WHEN YOU WENT INTO THE HOSPITAL WITH HENRY, WHAT HOSPITAL DID YOU GO TO?
A. THE MEDICAL UNIVERSITY.
Q. MUSC. AND WHEN WAS THE LAST TIME PRIOR TO GOING

INTO THE HOSPITAL THAT YOU HAD USED COCAINE?
A. LIKE THE DAY BEFORE.
Q. OKAY. WHEN DID THEY TELL YOU THAT YOU TESTED POSITIVE?
A. AFTER THE BABY WAS BORN, I BELIEVE.
Q. OKAY. AND YOU . . .
A. BUT I THINK I TOLD THEM.
Q. OKAY. THAT YOU HAD BEEN USING DRUGS?
A. YES.
Q. OKAY. DO YOU REMEMBER SPEAKING WITH SHIRLEY BROWN IN DECEMBER OF 1990 AFTER YOU HAD HENRY?

* * *

**[HALE 60]**

EIGHTEEN MONTHS AND HE GOT ANOTHER JOB; SO AFTER THAT IT WAS KIND OF A STRUGGLE, THE LAST COUPLE OF MONTHS, GETTING BACK AND FORTH TO WORK. SO I HAVEN'T BEEN MAKING IT.
Q. OKAY. YOU JUST MOVED RECENTLY. WHY IS THAT?
A. BECAUSE WITH IT BEING HARD FOR ME TO GET BACK AND FORTH TO WORK...
Q. UH-HUH.
A. ...AND ME GOING TO WORK MAYBE TWO OR THREE DAYS A WEEK...
Q. UH-HUH.
A. ...IT WAS FINANCIALLY HARD FOR ME TO KEEP MY

TRAILER UP.
Q. UH-HUH.
A. AND SO I HAD – I WAS FORCED TO MOVE TO MY AUNT'S.
Q. SO YOU'RE LIVING WITH YOUR AUNT NOW?
A. WELL, MY UNCLE'S EX-GIRLFRIEND, BUT I STILL CALL HER MY AUNT.
Q. WHAT'S HER NAME?
A. MICHELLE BROOKS.
(LETTER FROM MR. CONDON DATED MARCH 26, 1990 MARKED AS DEFENDANT'S EXHIBIT NUMBER 4.)
Q. OKAY. IF YOU WILL LOOK AT WHAT I HAVE MARKED AS DEFENDANT'S EXHIBIT NUMBER 4?
A. YES, THAT'S MY SIGNATURE.

* * *

**[HALE 65]**

Q. DO YOU REMEMBER HOW YOU WERE ARRESTED, WHAT YOU WERE DOING, HOW THE OFFICER TREATED YOU?
A. I THINK THEY SERVED ME WITH A WARRANT.
Q. DID THEY PUT YOU IN A SQUAD CAR?
A. I THINK I - I MIGHT HAVE BEEN THERE ON ANOTHER CHARGE WHEN THEY SERVED ME WITH THE WARRANT. I'M NOT SURE.
Q. YOU MIGHT HAVE BEEN AT THE JAIL ON ANOTHER CHARGE?

A. YES.
Q. OKAY. AND YOU BELIEVE YOU WERE IN JAIL FOR THIRTY DAYS BECAUSE OF POSSESSION - OR DISTRIBUTION OF DRUGS TO A MINOR?
A. I'M NOT SURE HOW LONG.
Q. OKAY. AND DID YOU RECEIVE ANY DRUG TREATMENT? WHILE YOU WERE IN JAIL.
A. NO. NO COUNSELING OR NOTHING.
Q. OKAY. AFTER YOU GOT OUT OF JAIL DID YOU GO TO DRUG TREATMENT?
A. I THINK I ATTENDED SOME SESSIONS.
Q. WHERE?
A. PROBABLY DOWNTOWN.
Q. AT CHARLESTON COUNTY SUBSTANCE ABUSE?
A. YES.
Q. AND WHO WOULD HAVE BEEN YOUR COUNSELOR IN THAT?

* * *

**[HALE 113]**

A. NO. I WAS TRYING TO GO TO MORRIS VILLAGE FOR A LONG TERM TREATMENT, BUT WHEN I WENT TO PROBATE COURT THE JUDGE JUST PUT ME ON A WAITING LIST.
Q. WHEN DID YOU GO TO PROBATE COURT?
A. AFTER I GOT OUT OF THE DETOX.
Q. WHY DID YOU GO TO PROBATE AFTER DETOX?
A. BECAUSE I ASKED MY BROTHER TO HELP ME GET INTO A LONG TERM TREATMENT.

Q. SO HE TRIED TO HAVE YOU INVOLUNTARILY COMMITTED TO LONG TERM TREATMENT? IS THAT WHAT YOU'RE SAYING?
A. RIGHT, A TWENTY EIGHT DAY PROGRAM OR SO.
Q. AND WHAT HAPPENED?
A. THEY PUT ME ON A WAITING LIST.
Q. AND DID YOU EVER GET IN?
A. THE WAITING LIST WAS THREE MONTHS LONG, AND I NEVER GOT IN.
Q. SO THEN WHAT HAPPENED?
A. I WENT BACK TO WORK ON THE STREET.
Q. SO YOU SAY YOU HAVE BEEN OFF DRUGS FOR A YEAR AND A HALF?
A. YES.
Q. AND WHAT HELPED YOU GET OFF DRUGS?
A. I GAVE MY LIFE TO CHRIST, AND THAT, CONSTANT PRAYER AND STUDYING.
Q. WHEN DID THAT HAPPEN?

* * *

**[HALE 115]**

A. READING, STUDYING, AND PRAYING.
Q. DID YOU HAVE ANY COUNSELING OR MEETINGS WITH ANY PRIESTS OR...
A. THEY HAVE – EXCUSE ME FOR CUTTING YOU OFF. THEY HAVE PEOPLE COMING IN MAYBE TWICE A WEEK OR SO TO HAVE BIBLE STUDIES. IT'S STRICTLY VOLUNTARY. EVERYBODY

DIDN'T ATTEND.
Q. BUT YOU ATTENDED?
A. YES, I DID.
Q. AFTER YOU GOT OUT OF JAIL DID YOU USE ANY DRUGS?
A. NO.
Q. AND YOU CURRENTLY ATTEND CHURCH?
A. YES, I DO.
Q. AND YOU STAYED WITH...
A. REVEREND STAPLES, BUT SINCE THEN HE'S BEEN – WE HAVE A NEW PASTOR, PASTOR HEMDON, MICHAEL HEMDON.
Q. MICHAEL HEMDON?
A. UH-HUH.
Q. DID REVEREND STAPLES OR REVEREND HEMDON COUNSEL YOU ABOUT STAYING OFF DRUGS?
A. I SPOKE TO HIM AND TOLD HIM ABOUT WHAT I USED TO DO. I WAS OPEN, TOTALLY OPEN WITH THEM.
Q. AND DID THEY COUNSEL YOU?
A. NOT DRUGS PER SE. JUST SPIRITUAL COUNSEL.
Q. WHAT DO YOU MEAN BY SPIRITUAL COUNSEL?

* * *

**[HALE 117]**

OTHER THAN THE MEDICAL UNIVERSITY?
A. FRANKLIN C. FETTER.
Q. I'M SORRY, WHEN YOU WERE PREGNANT WITH MICHAEL OR HENRY?
A. I DIDN'T KNOW OF ANYWHERE ELSE TO GO.

Q. WHY DIDN'T YOU GO TO FRANKLIN C. FETTER WHEN YOU WERE PREGNANT WITH MICHAEL?
A. BECAUSE I HAD A HABIT AT THE TIME. I DIDN'T KNOW. I MEAN, I REALLY WASN'T – I KNEW I WAS ON DRUGS, AND I KNEW THAT, YOU KNOW, IT WAS THE WRONG THING TO DO AT THE TIME.
Q. WHAT WAS THE WRONG THING TO DO?
A. USING DRUGS WHILE I HAD MY – WHILE I WAS PREGNANT.
Q. WERE YOU TAKING CARE OF YOURSELF WHILE YOU WERE PREGNANT WITH MICHAEL OR HENRY?
A. YES, I WAS.
Q. WERE YOU TAKING YOUR VITAMINS?
A. I DIDN'T HAVE ANY VITAMINS, BUT I WAS TAKING – I DIDN'T HAVE ANY PRESCRIBED VITAMINS, BUT I DID TAKE VITAMINS, AND TRIED TO EAT PROPER, AND DRINK PLENTY OF FLUIDS.
Q. WERE YOU WORKING ON THE STREETS WHILE YOU WERE PREGNANT?
A. YES, I WAS.

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

**EXCERPTS FROM TESTIMONY OF CHARLES HANNA**

**[HANNA 193]**

WERE THE SEQUENCE OF EVENTS THAT LED UP TO THE APPROVAL AND IMPLEMENTATION OF THIS POLICY DONE IN THE NORMAL COMMITTEE REPORTING AND REVIEWING PROCESS FOR ALL POLICIES AND PROTOCOLS THAT THE MEDICAL UNIVERSITY HANDLED?

A. IT WAS.

Q. WERE THERE ANY DEPARTURES FROM THOSE NORMAL PROCEDURES AND SEQUENCE OF EVENTS?

A. NO, SIR.

Q. SIR?

A. THERE WERE NO DEPARTURES.

Q. IN YOUR 30 YEARS ON THE BOARD OF OUR MEDICAL UNIVERSITY, HAS THE MEDICAL UNIVERSITY ALWAYS COMPLIED WITH MANDATORY REPORTING OF CHILD ABUSE?

A. TO THE BEST OF MY KNOWLEDGE THEY HAVE.

Q. WAS THE POLICY, THIS INTERAGENCY POLICY CONSISTENT WITH THE MEDICAL UNIVERSITY NORMS AND STANDARDS AND PHILOSOPHY?

A. YES.

Q. WHAT WAS THE GOAL OF THIS POLICY, DR. HANNA?

A. TO PROVIDE ADVICE AND HOPES OF IMPROVING THE CARE OF THE MOTHER AND THE ENSURING THE NORMAL DELIVERY OF THE BABY.

Q. WAS THERE ANY INTENTION TO DISCRIMINATE THROUGH THIS POLICY AGAINST BLACK WOMEN?

A. NO, SIR.

MR. HOOD: THANK YOU VERY MUCH.

THE COURT: CROSS-EXAMINATION.

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

**EXCERPT FROM TESTIMONY OF LOUISE HAYNES**

**[HAYNES 60]**

Q. AND ARE YOU THE - ARE YOU A MEMBER OF ANY PROFESSIONAL ASSOCIATION?
A. I'M A MEMBER OF THE NATIONAL ASSOCIATION OF SOCIAL WORKERS.
Q. DO YOU HAVE ANY SPECIAL TRAINING SINCE YOUR GRADUATE DEGREE IN SOCIAL WORK?
A. YES, I HAVE CONSIDERABLE TRAINING IN SUBSTANCE ABUSE.
Q. CAN YOU TELL US WHAT CONSIDERABLE TRAINING MEANS?
A. ATTENDANCE AT A VARIETY OF WORKSHOPS AND TRAINING INSTITUTES REGARDING SUBSTANCE ABUSE, SUCH AS RUTGERS ADVANCED SCHOOL FOR ALCOHOL AND OTHER DRUG STUDIES.
Q. WHAT KIND OF PROGRAM WAS THAT AT RUTGERS?
A. THAT WAS A WEEK-LONG PROGRAM LOOKING AT ADVANCES IN SUBSTANCE ABUSE TREATMENT.
Q. ANY OTHER TRAINING THAT YOU HAVE HAD IN THE SPECIFIC AREA OF SUBSTANCE ABUSE TREATMENT?
A. SPECIFICALLY JUST WORKSHOPS IN THE AREA.

Q. FROM THE PERIOD OF 1988 THROUGH 1992, WHAT DID YOU DO?
A. I WAS DIRECTOR OF THE OFFICE OF WOMEN'S SERVICES FOR THE SOUTH CAROLINA COMMISSION ON ALCOHOL AND DRUG ABUSE.
Q. AND WHO ESTABLISHED THAT COMMISSION?
A. THE COMMISSION?
Q. YES.
A. IT'S A STATE AGENCY. I BELIEVE IT'S ESTABLISHED THROUGH LEGISLATION.

* * *

**[HAYNES 63]**

A. AS A CONSULTANT TO THAT COMMISSION, YES, I DID.
Q. AND WHEN WAS THAT INVOLVEMENT?
A. THROUGHOUT THE TIME THAT I HELD THAT OFFICE.
Q. SO THROUGHOUT THE TIME THAT YOU HELD THE OFFICE AT THE COMMISSION?
A. RIGHT.
Q. THE SOUTH CAROLINA COMMISSION?
A. RIGHT.
Q. IS THE CHARLESTON COUNTY SUBSTANCE ABUSE COMMISSION OFTEN REFERRED TO JUST BY THE TERM CCSAC?
A. YES.
Q. SO IF WE SAY CCSAC, THAT'S THE SAME PLACE THAT YOU'RE FAMILIAR WITH?
A. YES.
Q. IN THE SUMMER OF 1989, WERE YOU PERSONALLY - 1989, WERE

YOU PERSONALLY FAMILIAR WITH WHAT TREATMENT WAS AVAILABLE FOR WOMEN IN GENERAL PROVIDED BY CCSAC?
A. YES.
Q. AND WHAT WAS AVAILABLE?
A. GENERALLY WHAT WAS AVAILABLE WAS OUTPATIENT COUNSELING. THEY DID HAVE, I'M NOT SURE ABOUT THE SUMMER OF 1989, BUT I'M - IT WAS DURING THE SUMMER OF 1989, AN INTENSIVE OUTPATIENT PROGRAM WAS ALSO IN EXISTENCE AT CCSAC, BUT PRIMARILY IT WAS OUTPATIENT COUNSELING.
Q. WAS THERE ANY SPECIFIC TREATMENT PROGRAM IN PLACE AT

**[HAYNES 64]**

CCSAC DIRECTED TOWARD WOMEN WHO USED COCAINE?
A. NOT TO MY KNOWLEDGE.
Q. WAS THERE ANY SPECIFIC PROGRAM IN PLACE FOR PREGNANT WOMEN WHO USED COCAINE AT CCSAC?
A. NO.
Q. WAS THERE ANY SPECIFIC PROGRAM IN PLACE FOR PREGNANT WOMEN WHO USED DRUGS OF ANY SORT AT CCSAC IN THE SUMMER OF 1989?
A. NO.
Q. IN THE LATE PART OF THE SUMMER OF 1989 AND THE FALL OF 1989, WERE YOU CONSULTED BY ANYONE FROM THE MEDICAL UNIVERSITY, CITY OF CHARLESTON POLICE DEPARTMENT, OR THE

SOLICITOR'S OFFICE CONCERNING THE DEVELOPMENT OF A POLICY TO DEAL WITH PREGNANT WOMEN AND SUBSTANCE ABUSE PROBLEMS?

A. NO.

Q. WERE YOU AVAILABLE FOR SUCH CONSULTATION AT THAT TIME?

A. YES.

Q. WERE YOU LOCATABLE?

A. YES.

Q. WERE YOU FAMILIAR WITH THE EFFECT THAT HURRICANE HUGO HAD ON THE - THE EFFECTIVENESS OF CCSAC OF CHARLESTON COUNTY SUBSTANCE ABUSE COMMISSION?

A. YES.

Q. AND WHAT DID HUGO DO TO THEM?

A. HAVE YOU GO HAD A DEVASTATING EFFECT ON MANY OF THE

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**[HAYNES 68]**

WOULD BE REFERRED TO THE CHARLESTON COUNTY SUBSTANCE ABUSE COMMISSION FOR TREATMENT. THAT IF THEY FAILED TO COMPLY WITH THAT TREATMENT OR TO CONTINUE TO PARTICIPATE IN THE PRENATAL CARE, THAT THEY COULD - THAT THEY COULD BE ARRESTED.

Q. DID YOU HAVE CONTACT CONCERNING THE INTERAGENCY POLICY IN YOUR WORK WITH CCSAC?

A. YES, I DID.

Q. AND WHAT WAS THAT?

A. I CAME TO CHARLESTON AND MET WITH MEMBERS OF THE STAFF OF

THE CHARLESTON COUNTY COMMISSION TO DISCUSS WITH THEM WHAT THEIR INVOLVEMENT HAD BEEN IN DEVELOPING THE POLICY. AND WHAT THEIR EXPERIENCE WAS IN TRYING TO IMPLEMENT THE POLICY.

Q. WERE YOU ALSO FAMILIAR, THROUGH YOUR WORK, WITH WHAT TREATMENT FACILITIES WERE AVAILABLE IN THE CHARLESTON AREA FOR PREGNANT WOMEN WITH SUBSTANCE ABUSE PROBLEMS IN THE FALL OF 1989?

A. YES.

Q. YOU HAVE ALREADY TESTIFIED TO WHAT WAS AVAILABLE THROUGH CCSAC. WHAT ELSE WAS AVAILABLE IN THIS AREA?

A. THERE WERE - THERE WAS - THERE WERE VERY FEW OTHER RESOURCES AVAILABLE AT THAT TIME. SEVERAL OF THE PRIVATE HOSPITALS MAY HAVE HAD SMALL INPATIENT UNITS, BUT IN TERMS OF A TRUE SUBSTANCE ABUSE PROGRAM, CCSAC WAS, FOR ALL PRACTICAL PURPOSES, THE ONLY SOURCE OF TREATMENT.

Q. AND IN - IN YOUR WORK, HAVE YOU HAD TO DIRECT - HAVE

* * *

**[HAYNES 73]**

ABUSE COMMISSION DID OPERATE A DETOXIFICATION FACILITY,

Q. DOES A DETOXIFICATION FACILITY HAVE ANY IMPACT UPON SOMEONE WITH A COCAINE PROBLEM?

A. THERE IS NOT A MEDICAL PROCEDURE TO DETOXIFY SOMEONE FROM COCAINE. DETOXIFICATION AS A MEDICAL PROCEDURE IS GENERALLY USED FOR ALCOHOL AND HEROIN.

Q. WHAT IS DETOXIFICATION, THEN?

A. DETOXIFICATION IS A PROCESS OF ESSENTIALLY WEANING SOMEONE OFF OF A DRUG SO THAT THEY DO NOT HAVE A MEDICAL PROBLEM AS A RESULT OF STOPPING THE USE OF THAT DRUG. FOR INSTANCE FOR ALCOHOL OR SOME PRESCRIPTION DRUGS YOU WOULD BE CONCERNED ABOUT SEIZURES, HIGH BLOOD PRESSURE, AND A NUMBER OF MEDICAL COMPLICATIONS. AND SO MEDICATION IS GIVEN TO KEEP SOMEONE FROM HAVING THOSE PROBLEMS. BUT THERE USUALLY YOU DO NOT GIVE MEDICATION TO DETOXIFY SOMEONE FROM COCAINE.

Q. IN THE FALL OF 1989, WERE THERE ANY SUBSTANCE ABUSE TREATMENT FACILITIES AVAILABLE IN THE CHARLESTON AREA THAT PROVIDED ANY KIND OF CHILD CARE?

A. NO.

Q. WHY WOULD THAT MAKE ANY DIFFERENCE?

A. WELL, VERY OFTEN THE LACK OF CHILD CARE IS A BARRIER FOR WOMEN TO SEEK TREATMENT. IF THEY HAVE PRIMARY RESPONSIBILITY FOR CARRYING FOR THEIR CHILDREN, AND THEY HAVE TO LEAVE THE CHILDREN IN ORDER TO GO TO TREATMENT, THAT PRESENTS A PROBLEM.

Q. WERE YOU FAMILIAR WITH THE LOCATION OF THE CHARLESTON

* * *

**[HAYNES 80]**

COULD BE A BARRIER.
Q. DO YOU KNOW WHO WAS WATCHING THEIR CHILDREN WHILE THEY WERE BUYING DRUGS OR USING DRUG?
MS. DUNN: OBJECTION, YOUR HONOR. THERE IS NO WAY THIS WITNESS COULD BE COMPETENT TO ANSWER THIS.
THE COURT: I SUSTAIN THE OBJECTION.
Q. (BY MS. SHOWERS, CONTINUING) MS. HAYNES, YOU BELIEVE THAT SOME WOMEN COULD HAVE BENEFITED FROM THE TREATMENT PROVIDED AT CHARLESTON COUNTY SUBSTANCE ABUSE COMMISSION, CORRECT?
A. YES.
Q. AND THE SOJOURNER'S CENTER, WHICH OPENED SOMETIME IN THE EARLY '90'S, HAS PROVIDED GREAT IMPROVEMENT IN THE SUBSTANCE ABUSE TREATMENT HERE IN CHARLESTON?
A. I BELIEVE THAT THAT IS TRUE.
Q. AND YOU HAVE TESTIFIED THAT YOU WERE FAMILIAR WITH THE INTERAGENCY POLICY AND IT WAS YOUR UNDERSTANDING THAT THE GOAL OF THE POLICY WAS TO IMPROVE THE HEALTH CARE OF THE MOTHERS' AND TO PROTECT THEIR UNBORN BABIES, TRUE?
A. THAT'S CORRECT.

Q. AND THE POLICY DID NOT UNDERTAKE TO PROVIDE SUBSTANCE ABUSE TREATMENT, IT MERELY FACILITATED GETTING WOMEN INTO THE TREATMENT, CORRECT?

A. THAT'S CORRECT.

Q. AND THERE IS NO SUBSTANCE ABUSE EXPERT, THAT YOU'RE AWARE

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

**EXCERPTS FROM TESTIMONY OF LAURA HILDEBRAND**

**[HILDEBRAND 124]**

(TESTIMONY EXCERPT OF LAURA HILDEBRAND, 12/9/96.)
MS. PALTROW: YOUR HONOR, I WOULD LIKE TO CALL LAURA HILDEBRAND TO THE STAND, PLEASE.

- - -

LAURA HILDEBRAND, PLF. WITNESS, SWORN.

DIRECT EXAMINATION

BY MS. PALTROW:

Q. GOOD MORNING, COULD YOU STATE YOUR NAME, PLEASE.

A. LAURA GILCHREST HILDEBRAND.

Q. CAN YOU TELL ME WHERE YOU WORK?

A. I WORK AT MUSC.

Q. AND DID YOU WORK AT MUSC IN -- FROM 1987 -

CAN YOU TELL ME A LITTLE BIT ABOUT WHEN YOU WORKED THERE?

A. I STARTED WORKING THERE IN 1987 AS A PEDIATRIC NURSE ON A SUBSPECIALTY UNIT, AND I WORKED ON THAT UNIT UNTIL FEBRUARY OF 1990 WHEN I BECAME THE SUSPECTED CHILD ABUSE AND NEGLECT

COORDINATOR. AND I MAINTAINED THAT POSITION UNTIL APRIL OF '92. AND THEN I STAYED OUT FOR AWHILE AND WENT BACK IN A NURSING RESOURCE POOL. AND NOW I'M THERE WORKING WITH THE KIDNEY PANCREAS TRANSPLANT PROGRAM.

Q. CAN YOU DESCRIBE WHAT YOU DID AS A SCAN COORDINATOR?

A. AS THE SCAN COORDINATOR I WAS RESPONSIBLE FOR COORDINATING THE CARE OF CHILDREN WHO HAD BEEN SUSPECTED OF

**[HILDEBRAND 125]**

CHILD ABUSE AND NEGLECT. I WAS LIAISON BETWEEN THE PHYSICIANS AND THE HOSPITAL AND USUALLY THE DEPARTMENT OF SOCIAL SERVICES.

I ALSO WAS RESPONSIBLE FOR COORDINATING A MONTHLY MEETING WHERE SEVERAL DISCIPLINES THAT WERE INVOLVED WITH SUSPECTED CASES OF ABUSE AND NEGLECT GOT TOGETHER AND DISCUSSED THE CASES, OFFERING SUGGESTIONS FOR ISSUES THAT WERE RELEVANT TO THE WELL-BEING OF THAT FAMILY AND ESPECIALLY THE CHILD.

Q. AND AT THE BEGINNING WHEN YOU BEGAN YOUR WORK WITH THE SCAN COMMITTEE IN FEBRUARY OF 1990, AT THAT POINT IN TIME IT DIDN'T HAVE ANYTHING TO DO WITH THE INTERAGENCY POLICY; ISN'T THAT CORRECT?

A. NOT REALLY. WE DID GET SCAN REFERRAL FORMS ON ALL CASES OF CHILDREN WHO WERE SUSPECTED OF ABUSE OR NEGLECT. ANY CASE. I WAS GETTING SCAN REFERRALS FROM ALL OVER THE HOSPITAL AND ALSO FROM CHARLESTON MEMORIAL HOSPITAL.

Q. AND THAT WOULD INCLUDE REFERRALS, FOR EXAMPLE, FOR A PREGNANT WOMAN WHO IS DRINKING ALCOHOL?

A. YES, ANY CHILDREN THAT WERE AT RISK.

Q. BUT AT THAT POINT IN TIME THERE WAS NO PARTICULAR COORDINATION IN TERMS OF THE INTERAGENCY POLICY REGARDING REPORTING TO THE POLICE AND SOLICITOR'S OFFICE; IS THAT CORRECT?

A. WELL D. WARING WAS ALWAYS PRESENT AT THE MEETINGS. AND

**[HILDEBRAND 126]**

THE SOLICITOR'S OFFICE WAS ALSO SENT AN AGENDA ON ANY CASES OF ABUSE AND NEGLECT OR SUSPECTED CASES.

Q. WHEN YOU SAY THAT THEY WERE SENT AGENDAS, CAN YOU EXPLAIN WHAT A SCAN AGENDA IS, PLEASE?

A. WELL, AS I SAID, I RECEIVED WHAT WAS CALLED A SCAN REFERRAL FROM A HOSPITAL SOCIAL WORKER ANYWHERE IN MUSC, ANYWHERE AT CHARLESTON MEMORIAL HOSPITAL. AND THAT HAD A

BRIEF SYNOPSIS OF THE CASE. I THEN IN TURN PUT THAT ON WHAT I CALLED A SCAN AGENDA. AND THE SCAN AGENDAS WERE MAILED OUT TO ALL OF THE MEMBERS OF THE SCAN TEAM, WHICH WERE SEVERAL DISCIPLINES.

Q. AND THAT AGENDA MIGHT INCLUDE A VARIETY OF MEDICAL INFORMATION ABOUT A PERSON; ISN'T THAT CORRECT?

A. RIGHT.

Q. IT MIGHT EVEN INCLUDE, FOR EXAMPLE, WHETHER SOMEONE WAS HIV POSITIVE?

A. IT MIGHT.

Q. AND IT MIGHT INCLUDE WHETHER THEY WERE HAVING A TUBAL LIGATION; ISN'T THAT CORRECT?

A. YES.

Q. I'M GOING TO SHOW YOU WHAT HAS BEEN PREMARKED EXHIBIT "228-E."

MS. SHOWERS: 228? IT SAYS 268.

Q. (BY MS. PALTROW, CONTINUING) CAN YOU TELL ME IF YOU RECOGNIZE THESE DOCUMENTS?

* * *

**[HILDEBRAND 134]**

THE COURT: IF THE OTHER HANDWRITING, LADIES AND GENTLEMEN, IS IDENTIFIED AS BEING SOMEONE THEN IT CAN COME IN ALSO, BUT UNTIL SOMEBODY IDENTIFIES THIS HANDWRITING, WE DON'T KNOW WHO WROTE IT AND THEREFORE IT'S GOING TO BE WHITED OUT

UNLESS SOMEBODY IDENTIFIES IT.
Q. (BY MS. PALTROW, CONTINUING) CAN YOU TELL US IN WHAT CAPACITY GARDEN BLINCOW WAS ATTENDING THE SCAN MEETING AT THE TIME THAT YOU WERE COORDINATING?
A. SHE CAME FROM THE SOLICITOR'S OFFICE. I WASN'T INVOLVED IN WHAT PARTICULAR INFORMATION THAT SHE WAS REALLY GATHERING. BUT SHE WAS THERE TO COMMUNICATE WITH US ON CHILDREN THAT HAD - I HAD RECEIVED SCAN REFERRALS ON THAT HAD BEEN SUSPECTED OF BEING EXPOSED TO DRUGS WHILE THEY WERE IN THE WOMB.
Q. SO THIS WAS IN RELATIONSHIP TO THE INTERAGENCY POLICY; IS THAT CORRECT?
A. YES, I BELIEVE IT WAS.
Q. AND SHE WAS NOT THERE TO ATTEND FOR ANY OTHER PORTIONS OF THE MEETING?
A. NO.
Q. MAYBE YOU SHOULD EXPLAIN THAT AT SOME POINT ISN'T IT CORRECT THAT YOU SEGREGATED OUT OF THE SCAN MEETINGS THOSE PORTIONS IN WHICH YOU WERE DISCUSSING CHILDREN EXPOSED TO COCAINE?
A. RIGHT.
Q. AND WHEN YOU SAY THAT YOU PROVIDED THESE SCAN AGENDAS TO

**[HILDEBRAND 135]**

A GARDEN BLINCOW, WHEN DID YOU THAT DID YOU SEND THEM BY

REGULAR MAIL?
A. I BELIEVE THAT I DID. I DON'T RECALL.
Q. AND UNDER YOUR OWN - WHERE DID YOU KEEP THESE - YOUR OWN COPIES OF THESE AGENDAS?
A. I HAD A FILE CABINET IN MY OFFICE.
Q. AND WAS THAT A LOCKED FILE CABINET?
A. I DON'T REALLY REMEMBER IF I LOCKED IT ALL OF THE TIME, BUT IT WAS IN MY CUBICLE AND IT WAS MY FILE CABINET.
Q. AND YOU DIDN'T HAVE ANY PARTICULAR WRITTEN PROCEDURES FOR THE SECURITY OF THESE PARTICULAR SCAN REPORTS, DID YOU?
A. NO.
Q. I WOULD LIKE TO SHOW YOU WHAT HAS BEEN PREMARKED PLAINTIFF'S EXHIBIT 172-C. CAN YOU TELL ME WHETHER YOU RECOGNIZE THIS DOCUMENT?
A. THE TYPED PORTION APPEARS TO BE A SCAN AGENDA THAT I SENT OUT.
Q. DO YOU RECOGNIZE THE HANDWRITING?
A. NO.
MS. PALTROW: YOUR HONOR, I WOULD LIKE TO MOVE INTO EVIDENCE THE EXHIBIT AGAIN WITH THE QUALIFYING OF HAVING THE PORTION THAT SHE DOESN'T RECOGNIZE WHITED OUT AND THEN I WOULD LIKE TO ASK HER TO PUBLISH TWO SENTENCES FROM IT.
THE COURT: HAVE YOU SEEN THIS?

MS. SHOWERS: NO, SIR, NOT UNTIL SHE JUST HANDED IT

**[HILDEBRAND 136]**

TO ME. BUT WE WOULD OBJECT TO RELEVANCE. IT'S A NON-PLAINTIFF.

MS. PALTROW: YOUR HONOR, THESE WERE ALL PRODUCED - THESE WERE ALL SCAN REPORTS CONCERNING THE INTERAGENCY POLICY, AND I WOULD LIKE TO BE ABLE TO ASK HER QUESTIONS ABOUT THIS PARTICULAR ONE BECAUSE IT, OF THE MANY -

THE COURT: LET ME SEE IT, IF YOU DON'T MIND.

MS. PALTROW: THIS ONE HAPPENS TO BE HIGHLIGHTED.

THE COURT: I SUSTAIN THE OBJECTION AS TO RELEVANCE AND AS TO 403 CONSIDERATION.

Q. (BY MS. PALTROW, CONTINUING) WHEN YOU MAILED THE SCAN DOCUMENTS TO GARDEN BLINCOW AT THE SOLICITOR'S OFFICE YOU DIDN'T HAVE A SEARCH WARRANT BEFORE YOU DID THAT, DID YOU?

A. NO.

Q. YOU DIDN'T HAVE A COURT ORDER BEFORE YOU DID THAT?

A. NO.

Q. AND DID YOU ALSO SEND SCAN REPORTS, SCAN AGENDAS SUMMARIZING THE CASES TO CINDY LEGARE AT THE SOLICITOR'S OFFICE?

A. I CAN'T REMEMBER REALLY WHO I SENT THEM TO OVER THERE. IF I SENT ONE SET OF AGENDAS OR TWO SETS OF AGENDAS, I REALLY DON'T REMEMBER.

Q. AND WOULDN'T IT BE CORRECT TO SAY THAT PART OF WHAT YOU WERE TRACKING WAS WHETHER WOMEN WERE BEING ARRESTED PURSUANT TO THE POLICY?

* * *

**[HILDEBRAND 144]**

A. I DON'T -- I REALLY DON'T REMEMBER. I KNOW AT ONE POINT IN TIME I DO REMEMBER ONE OF HER OFFICES WHERE IT WAS JUST HER DESK AND THERE WAS SOME RESOURCE MATERIALS ON A WALL. I DON'T EVEN KNOW, I CAN'T REMEMBER WHERE IT WAS IN THE BUILDING.

Q. BUT WOULD IT BE CORRECT TO SAY THAT YOU DIDN'T LEAVE IT, FOR EXAMPLE, IN A LOCKED FILE DRAWER?

A. NO, I DIDN'T PUT IT IN A LOCKED DRAWER.

Q. IN YOUR CAPACITY FILLING IN FOR SHIRLEY BROWN AND TAKING YOU SAID A HISTORY?

A. YES.

Q. WOULD THERE HAVE BEEN ANY REASON FOR YOU IN DOING THAT TO KNOW THE RACE OF THE FATHER?

MS. SHOWERS: OBJECTION, YOUR HONOR, 401 AND 403.

THE COURT: I'LL PERMIT IT.

A. NO, I DID NOT DOCUMENT RACE. I WAS TAKING A SOCIAL

HISTORY OF THE MOTHER.
Q. I WANT TO SHOW YOU NOW WHAT HAS BEEN PREMARKED PLAINTIFF'S EXHIBIT 229-E. CAN YOU TELL ME. WHETHER YOU RECOGNIZE THESE?
A. IT'S MY WRITING. I HAVE TO READ THROUGH IT TO REALLY REMEMBER IT.
Q. BUT THIS IS YOUR HANDWRITING?
A. RIGHT.
Q. AND THIS IS FROM A MEDICAL RECORD; IS THAT CORRECT?
A. YES, IT IS.

**[HILDEBRAND 145]**

Q. AND CAN YOU TELL US WHOSE MEDICAL RECORD IT WOULD BE FROM?
A. THE PATIENT?
Q. YES.
A. THERESA JOSEPH.
Q. AND THESE WOULD HAVE BEEN NOTES THAT YOU MADE IN YOUR CAPACITY FILLING IN FOR SHIRLEY BROWN; ISN'T THAT CORRECT?
A. YES.
MS. PALTROW: YOUR HONOR, I WOULD LIKE TO AT THIS POINT MOVE THIS EXHIBIT INTO EVIDENCE.
MS. SHOWERS,: YOUR HONOR, WE WOULD ASK THAT THE ENTIRE MEDICAL RECORD OF MS. JOSEPH BE ADMITTED INTO EVIDENCE. SHE IS A PLAINTIFF. I'M SURE THAT SHE WILL PROBABLY TESTIFY, BUT WE WOULD PREFER THE ENTIRE MEDICAL

RECORD SO IT'S NOT TAKEN OUT OF CONTEXT.

MS. PALTROW: YOUR HONOR, I HAVE NO OBJECTION -- I MEAN, WE'LL DO THAT I'M SURE SUBJECT TO MAKING SURE THAT WE ALL HAVE THE SAME PAGES, BUT I WOULD LIKE TO ASK THIS PARTICULAR WITNESS TO PUBLISH A PORTION OF HER OWN NOTES FROM THAT RECORD.

THE COURT: I UNDERSTAND THIS EXHIBIT IS IN WITHOUT OBJECTION, BUT COUNSEL WANTS THE ENTIRE MEDICAL RECORD.

MS. PALTROW: WE HAVE NO OBJECTION.

THE COURT: YOU HAVE NO OBJECTION TO THAT.

MS. PALTROW: SUBJECT TO OUR AGREEING THAT YOU HAVE

**[HILDEBRAND 146]**

THE RIGHT RECORDS.

THE COURT: THAT YOU WHAT?

MS. PALTROW: SUBJECT TO THE OPPORTUNITY TO LOOK AT THE ORIGINALS.

THE COURT: SURE. SURE. ALL OF THE MEDICAL RECORDS, LADIES AND GENTLEMEN, WHEN THEY HAVE COME IN WITHOUT OBJECTION, I HAVE ADDED TO THAT THE FACT THAT I WANT THE LAWYERS TO AT SOME POINT IN TIME DESIGNATE WHAT PORTIONS OF THEM ARE RELEVANT SO YOU WON'T HAVE TO STUDY THE ENTIRE

RECORD. SO THIS COMES IN WITH THAT SAME UNDERSTANDING.
Q. (BY MS. PALTROW, CONTINUING) AT THIS POINT, MS. HILDEBRAND, I WOULD LIKE TO ASK YOU TO READ FROM YOUR NOTES STARTING ON THE SECOND PAGE WITH THE WORD SPOKE.
THE COURT: WHAT NUMBER IS THIS?
MS. PALTROW: 229-E.
THE COURT: DO I HAVE A COPY OF IT?
MS. PALTROW: I DON'T THINK I PASSED IT UP TO YOU, YOUR HONOR.
THE COURT: THANK YOU.
A. I CAN'T READ THE DATE OR TIME. "SPOKE WITH THERESA AGAIN. SHE EXPRESSED A DESIRE TO GET OFF DRUGS AS WELL AS HER BOYFRIEND. SHE PROMISED THAT SHE WOULD KEEP APPOINTMENTS AND WORK HARD TO GET OFF DRUGS. ALL INFORMATION PASSED ONTO S. WITTSCHEN, O.B. HOSPITAL SOCIAL WORKER." AND THEN I SIGNED MY NAME.

**[HILDEBRAND 147]**

Q OKAY. TO THE END OF THE PAGE?
A. "RECEIVED CALL FROM DOCTOR TATE IN REGARDS TO PATIENT'S THREAT TO LEAVE AMA. WENT IN WITH THERESA. FOUND HER IN ROOM IN THE DARK CRYING. PATIENT STATES SHE NEEDS TO GET AWAY TO

THINK AND BE ALONE. SHE WAS ENCOURAGED TO STAY AND COMPLETE TREATMENT FOR RIGHT FOOT CELLULITIS. SHE WAS TOLD THAT SHE WOULD BE RISKING HER HEALTH AS WELL AS THE UNBORN CHILD'S. NOTIFIED MR. JOHN SANDERS REGARDING PATIENT AND LEGALITIES OF POLICY AS MOTHER HAS COMPLETED AND SIGNED ALL LETTERS IN REGARDS TO CCSAC COUNSELING AND PRENATAL VISITS. AT THIS POINT WE DO NOT HAVE LEGAL GROUND TO ARREST AS SHE HAS NOT MISSED THOSE APPOINTMENTS YET." AND THEN I SIGNED MY NAME.

Q. CAN YOU TELL ME WHAT AMA STANDS FOR?

A. AGAINST MEDICAL ADVICE.

Q. AND WHAT -- CAN YOU EXPLAIN WHAT THAT MIGHT MEAN?

A. WELL IT SOUNDS LIKE SHE WANTED TO LEAVE THE HOSPITAL BUT SHE HAD RIGHT FOOT CELLULITIS AND THE MEDICAL TEAM WAS REQUESTING THAT SHE STAY AND RECEIVE TREATMENT FOR THAT.

Q. AND WOULD THESE NOTES HAVE BEEN MADE AFTER YOU HAD MET WITH HER CONCERNING THE INTERAGENCY POLICY?

A. I CAN'T SEE THE TIMES, BUT IT LOOKS LIKE I HAD ALREADY MET WITH HER AND HAD THE CONSENT FORMS SIGNED.

Q. AND CAN YOU TELL ME WHAT CCSAC IS?

A. CHARLESTON COUNTY SUBSTANCE ABUSE COMMISSION.

Q. AND IN YOUR CAPACITY, MOVING ON TO - MORE GENERALLY, IN

**[HILDEBRAND 148]**

YOUR CAPACITY FILLING IN FOR SHIRLEY BROWN, GIVING OUT THESE FORMS, WAS THE CHARLESTON COUNTY SUBSTANCE ABUSE COMMISSION THE ONLY PLACE THAT YOU WERE REFERRING WOMEN TO AT THAT POINT?

A. YES.

Q. AND DID YOU DID NOT GIVE --

A. WELL, I TAKE THAT BACK. SOME WOMEN WHO HAD NOT RECEIVED PRENATAL CARE, I WOULD MAKE AN APPOINTMENT AT AN O.B. CLINIC.

Q. IN ADDITION TO THIS?

A. RIGHT. AND I MAY HAVE ON OCCASION BEEN THE PERSON THAT TALKED TO DSS REGARDING OTHER CHILDREN IN THE HOME AND THE BABY IN THE WOMB.

Q. IN YOUR CAPACITY FILLING IN FOR SHIRLEY BROWN, YOU DIDN'T PROVIDE THE PATIENTS WHO TESTED POSITIVE WITH ANY KIND OF A LIST OF RESOURCES IDENTIFYING A NUMBER OF TREATMENT PROGRAMS THEY MIGHT GO TO, DID YOU?

A. NO. I WOULD JUST GIVE THEM THE NUMBER OF WHERE I HAD MADE THEIR APPOINTMENT AND THE NAME.

Q. AND WERE THERE OCCASIONS WHEN YOU WERE FILLING IN FOR SHIRLEY BROWN WHEN YOU DID NOT MEET THE PATIENT UNTIL THE POINT WHEN SHE HAD ALREADY GIVEN BIRTH?

A. I DON'T REMEMBER SPECIFIC EXAMPLES.
Q. BUT WOULD IT BE FAIR TO SAY THAT YOU WEREN'T ONLY COUNSELING WOMEN WHEN THEY WERE PREGNANT, SOME OF THEM ALSO HAD ALREADY DELIVERED?
A. I DID IT SO FEW TIMES I NEED TO KNOW SPECIFICS. I DON'T

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**[HILDEBRAND 150]**

Q. WHO TAUGHT YOU WHAT TO DO WHEN YOU FILLED IN FOR SHIRLEY BROWN?
A. SHIRLEY AND I MET BRIEFLY BEFORE THIS - SHE EVER - WHEN THIS CAME UP THAT SHE MAY NEED A DAY OFF, WE MET PREVIOUSLY AND SHE SHOWED ME THE FORMS THAT NEEDED TO BE SIGNED AND SHOWED ME WHERE THE VIDEOS WERE, AND THAT'S WHAT WE DID FOR MY ORIENTATION.
Q. DID SHE TELL WHAT INFORMATION TO COLLECT WHEN YOU INTERVIEWED THE PATIENTS?
A. I JUST HAD TO GET A SOCIAL HISTORY, DISCUSS WITH THE MOTHERS WHAT WE HAD FOUND ON THE DRUG TESTING. AND HAVE THOSE THREE FORMS SIGNED.
Q. DID SHIRLEY TELL YOU TO NOTE THE RACE OF A PATIENT WHEN YOU TOOK THE HISTORY?
A. NO.
Q. IS RACE NOTED IN EVERY PATIENT'S CHART AT THE MEDICAL

17 UNIVERSITY?
18 A. I BELIEVE ON THE FRONT ADMISSION SHEET, IT'S RACE AND AGE
19 THAT IS NOTED.
20 Q. DO YOU STILL HAVE EXHIBIT 229-E IN FRONT OF YOU, THE
21 NOTES ABOUT THERESA JOSEPH?
22 A. YES.
23 Q. YOU WERE ASKED TO READ THE SECOND PAGE. I WOULD LIKE YOU
24 TO READ THE FIRST PAGE OF YOUR NOTE TO THE JURY, PLEASE.
25 A. OKAY. 6/14 AT 9:30 IN THE MORNING I WROTE, "REVIEWED

**[HILDEBRAND 151]**

1 PATIENT'S LABORATORY DATA: URINE DRUG SCREEN IS POSITIVE FOR
2 COCAINE, OPIATES, MORPHINE AND BENZ" - I CAN'T READ MY OWN
3 WRITING "BENZAPHECGONINE."
4 Q. I'M GLAD YOU'RE PRONOUNCING THAT.
5 A. "PATIENT IS 33-YEAR-OLD WHO IS 14 WEEKS PREGNANT AND
6 TOTAL OF THREE CHILDREN, TWO CHILDREN, NAMES WITHHELD, LIVE IN
7 NEW YORK WITH THEIR FATHER, NAME WITHHELD. THE THIRD CHILD IS
8 SIX-YEAR-OLD SON WHO LIVES WITH HIS FATHER MR. WILLIAM NIXON.
9 THERESA REFUSES TO GIVE A PERMANENT ADDRESS. STATES SHE LIVES
10 WITH DIFFERENT FRIENDS. SHE DID GIVE HER EX-HUSBAND'S ADDRESS
11 FOR MAIL. MR WILLIAM MOREY AT 2020 ALTON STREET, NORTH

CHARLESTON, 29406. DISCUSSED WITH S. WITTSCHEN TO TALK WITH MS. JOSEPH REGARDING HOUSING OPTIONS. SHE APPLIED FOR MEDICAID ON LAST ADMISSION ON 6/6/91. ENCOURAGED HER TO GET WIC AND FOOD STAMPS, ETCETERA. S. WITTSCHEN TO DISCUSS FURTHER WITH MS. JOSEPH. PRENATAL APPOINTMENT MADE FOR 6/6/91 AT MUSC AT 8:30 A.M. AS OF PRESENT SHE HAS HAD NO PRENATAL CARE. MS. JOSEPH SMOKES A HALF PACK OF CIGARETTES PER DAY AND SHE WAS ENCOURAGED TO TRY TO DECREASE THAT AMOUNT. SHE PRESENTLY DOES NOT CONSUME ALCOHOL OR MARIJUANA. MS. JOSEPH READILY ADMITS TO HEROIN AND COCAINE USE DAILY. SHE REPORTS USING FIFTY DOLLARS PER DAY. SHE REPORTS MIXING COCAINE AND HEROIN AND SHOOTS IT UP INTRAVENOUSLY. HER HABIT IS SUPPORTED BY HER BOYFRIEND AND SHE DOES NOT WORK. THIS MAN WHOSE NAME WAS WITHHELD ALSO USES DRUGS REPORTEDLY BY THERESA. THE VIDEO

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**[HILDEBRAND 153]**

THE COURT: WHEN WE TALK ABOUT WHAT PORTIONS OF THE RECORD ARE RELEVANT.

MS. PALTROW: OKAY.

THE COURT: SHE HAD SOME POSITIVES, THAT WAS MY

UNDERSTANDING. THEN YOU HAVE TO REMEMBER TO BRING IT TO MY ATTENTION.

MS. SHOWERS: RIGHT.

THE COURT: AT SOME POINT IN TIME SOMEBODY HAS GOT TO SIT DOWN AND GO THROUGH THESE RECORDS AND SEE WHICH PART GOES TO THE JURY

MS. SHOWERS: I WASN'T GOING TO GO INTO ANY OF THAT.

THE COURT: ALL RIGHT.

Q. (BY MS. SHOWERS, CONTINUING) WHILE EMPLOYED AT THE MUSC FROM 1990 TO 1992 YOU WERE THE SCAN COORDINATOR?

A. RIGHT.

Q. COULD YOU EXPLAIN TO THE JURY WHAT THE SCAN MEETINGS WERE?

A. AS I SAID EARLIER, I RECEIVED SCAN REFERRALS FROM SOCIAL WORKERS THROUGHOUT THE HOSPITAL AND FROM CHARLESTON MEMORIAL HOSPITAL, AND WE DISCUSSED WITH VARIOUS DISCIPLINES WHO WERE INVOLVED WITH CASES OF SUSPECTED ABUSE OR NEGLECT REALLY WAYS OF TRYING TO HELP THESE CHILDREN AND THE FAMILIES.

Q. WHAT WAS THE GOAL OF THE SCAN MEETING?

A. IT WAS TO PROVIDE COMMUNICATIONS, TO PROVIDE - HOPEFULLY PROVIDE BETTER CARE FOR THE CHILDREN. THE FAMILIES,

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